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REFORM OF CANADA'S SENATE

REPORT OF THE ALBERTA SELECT SPECIAL COMMITTEE ON UPPER HOUSE REFORM

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REPORT OF THE ALBERTA SELECT SPECIAL COMMITTEE ON SENATE REFORM

March 1985

Chairman: Dennis Anderson, M.L.A.
Calgary Currie

To the Honourable Gerard Amerongen,
Speaker of the legislative Assembly
of the Province of Alberta

The Select Special Committee on Senate Reform, established on November 23, 1983, herewith submits its report and recommendations for consideration by the Legislative Assembly.

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Dennis Anderson, M.L.A.
Chairman

Members:

Sheila Embury, M.L.A.
Vice Chairman
Calgary North West

Harry Alger, M.L.A.
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David Carter, M.L.A.
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Carl Paproski, M.L.A.
Edmonton Kingsway

Nigel Pengelly, M.L.A.
Innisfail

Ray Speaker, M.L.A.
Little Bow

ALBERTA SELECT SPECIAL COMMITTEE ON SENATE REFORM

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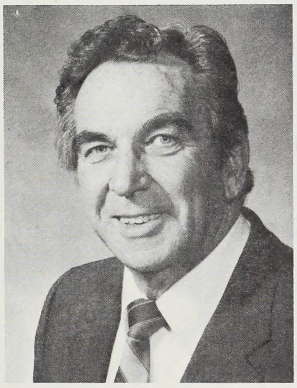

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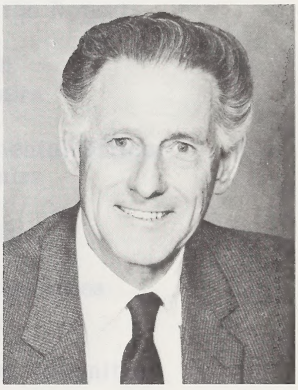

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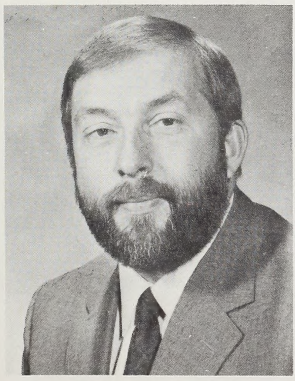

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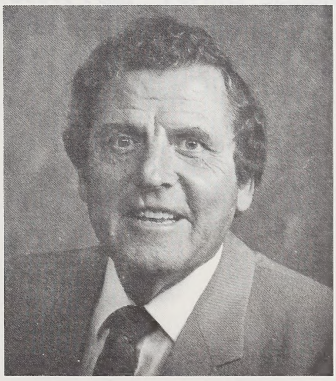

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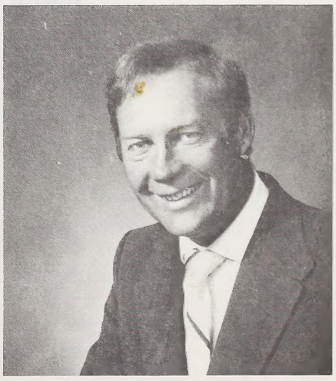

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Mrs. Louise Empson - Executive Secretary to the Committee

and

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Mr. Garry Pocock - Formerly with
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Mr. Robert H. Reynolds - Senior Intergovernmental Officer
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In addition, the Committee recognizes the contribution of:

Mr. Douglas Blain - Former Clerk of Committees
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Ms. Susan Elliott - Former Co-ordinator to the Committee

Mrs. Peggy Davidson - Former Secretary, Clerk's Office

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I. OVERVIEW

The Alberta Select Special Committee on Upper House Reform recommends a Senate for Canada that is directly **elected** by the people, with each province represented by an **equal** number of Senators. Senators should have powers which allow them to be **effective** in providing the regional voice envisioned by the Fathers of Confederation.

The Committee is convinced that only a directly-elected Upper House can have the trust of the Canadian people and that only a Senate with equal numbers from each province will uphold the principle of provinces being equal partners in Confederation as recognized by the amending formula accepted in the Constitution Act, 1982. It is evident that only a Senate with authority can balance federal decisions.

Many Albertans are impatient for such change believing that Alberta's proper place in Confederation can only be secured with a Senate constituted in a more credible manner.

The Alberta Committee on Upper House Reform unanimously shares this impatience. Canada is currently the only free federal state that does not have an effective Upper House. Canada needs an effective Upper House in order to protect the diverse interests of Canadians. It is hoped that this Committee's report is a step in that direction.

The Committee also believes that, while the Senate should be the institution through which people of the provinces can participate in national decision-making, the Senate should not be a forum for intergovernmental discussion. To fulfill that function, First Ministers' Conferences should assume a constitutionally entrenched place in our Parliamentary system.

A unique aspect of the Committee's conclusions is the recommendation that the Senate be organized on a different basis than any other Upper House in the Commonwealth. For example, the Senate should be organized without the recognition of political parties because, if the role of the Senate is to represent the regions (provinces) of the country, it must be structured to represent those regions' interests rather than the interests of national political parties.

The recommendations are based upon the belief that it is important that the Senate be as independent as possible from the House of Commons, while at the same time not unduly hinder the work of the Lower House.

Throughout the months of study, the Committee considered that although the report would recommend the final form which the Senate of Canada must take, it may be some years before this substantial change is a reality. The Committee recognizes that Canadians are very eager to change some critical aspects of the Senate; therefore possible intermediary changes are outlined. Although such changes fall short of the final objectives, they represent a considerable improvement to the present system. It must be emphasized, however, that Albertans are anxious for the change that will see an equal and elected Senate of Canada become an effective component of our federal Parliament. Any interim changes must be seen only as steps in that direction.

The Committee, very early in its mandate, considered and rejected the possibility of abolition. It was felt that the original purpose for a Senate is sound, even though the Senate's current ability to fulfill its mandate is in question.

In the course of the Committee's hearings, an overwhelming majority of presentors rejected abolition.

This introductory section of the report outlines the recommendations. A detailed account of the rationale behind the recommendations follows. It must be emphasized that the main recommendations reflect the views of the majority of Albertans who submitted presentations to the Committee, or who appeared at the public hearings throughout the province. In supporting the elected, equal and effective concept, the Committee endorses the major recommendations of the Government of Prince Edward Island and the position put forward in the last paper on this subject produced by the Canada West Foundation.

II. RECOMMENDATIONS

II. RECOMMENDATIONS

THE PROPOSED FORM OF THE SENATE OF CANADA

THE PURPOSE OF THE CANADIAN SENATE

IT IS RECOMMENDED THAT

The Senate of Canada should maintain as its primary purpose the objective established by the Fathers of Confederation, namely to represent the regions[1] in the federal decision-making process.

In addition,

a) the Senate should continue to act as a body of "sober second thought";

b) another original purpose of the Senate, that is, to represent property owners, should be abandoned immediately;

c) the Senate should not be a forum for inter-governmental negotiations.

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1 For the purposes of this report, the term "region" should be considered to be synonymous with the term "province". The concept of "region" was first put forward at the time when, in the Prairies, at least, there were no provincial legislatures or governments, the area was federally administered and the population base was microscopic.

B. METHOD OF SELECTION

1. Current Membership

IT IS RECOMMENDED THAT

a) The tenure of current Senators should be terminated through an equitable severance process.

b) The termination of tenure should be accomplished as quickly as possible to facilitate an immediate move to the new system.

2. Method of Selection and Basis of Representation of New Senators

IT IS RECOMMENDED THAT

a) The Senate should consist of 64 Senators, six representing each province and two representing each territory;

b) Senators should be elected on a first-past-the-post basis, a system now in use in federal and provincial elections;

c) Senators should represent constituencies whose boundaries are identical to provincial boundaries;

d) Senators should be elected for the life of two provincial legislatures;

e) In each province, three Senators should be elected during each provincial election, with each voter being able to vote for three candidates;

f) The qualifications for candidates to the Senate should be the same as those for Members of Parliament;

g) Upon winning an election, Senators should be required to resign from any provincial or civic elected office they hold.

3. Powers of the Senate

IT IS RECOMMENDED THAT

a) The Senate should have the power to initiate any legislation except a money or taxation bill;

b) Notwithstanding (a), the Senate should have the power to initiate supply resolutions relating to the Senate's own operational budget;

c) The Senate should have the power to amend any bill, after which the House of Commons would consider the amendment;

d) The Senate should have the power to veto any bill except a supply bill;

e) The Senate should retain the existing 180 day suspensive veto over constitutional issues;

f) The House of Commons should have the power to override a Senate veto on money or taxation bills by a simple majority;

g) The Senate should vote on a money or taxation bill within 90 days and on other bills within 180 days after it is sent by the House of Commons;

h) The House of Commons should be able to override any amendment (veto) passed by the Senate on a bill other than a money or taxation bill, by a vote that is greater in percentage terms than the Senate's vote to amend;

i) Non-military treaties should be subject to ratification by the Senate;

j) All changes affecting the French and English languages in Canada should be subject to a Double Majority" veto, that is, a majority of all Senators combined with a majority of French-speaking Senators or English-speaking Senators, depending on the issue.

C. SENATE ORGANIZATION

IT IS RECOMMENDED THAT

a) The traditional opposition and government roles in the current Senate be abolished, including the positions of Government Leader and Opposition Leader;

b) Senators should be physically seated in provincial delegations, regardless of any party affiliations;

c) Each provincial delegation should select from its membership a chairman; chairmen should sit at the pleasure of the provincial delegation;

d) A Speaker should be elected by a majority of the Senate at a specified time every four years, and the Senate may, at any time, initiate an election for Speaker by a two-thirds vote;

e) The ten provincial chairmen, headed by the Speaker of the Senate, should constitute a "Senate Executive Council";

f) The Senate Executive Council should determine the order of business of the Senate, appointment of committee chairmen and membership of committees;

g) The characterization of legislation, that is, the determination of whether a bill is or is not a money or taxation bill, should be carried out by joint agreement of the Speakers of the House of Commons and the Senate, in accordance with the British definition of a supply bill;

h) Senate Executive Council members should receive remuneration and staff assistance in addition to that received by other Senators;

i) Senators should not be eligible for appointments to Cabinet.

4. OTHER RECOMMENDATIONS

IT IS RECOMMENDED THAT

a) The requirement that First Ministers' Conferences meet on a regular basis should be entrenched in the Constitution;

b) First Ministers should have the power to ratify Supreme Court appointments by a majority vote;

c) The use of emergency powers by the federal government should require ratification by a majority vote of First Ministers except in war time;

d) Federal powers of reservation and disallowance are antiquated and unnecessary and therefore should be abolished.

III. AN OVERVIEW FROM AN ALBERTA PERSPECTIVE

III. AN OVERVIEW FROM AN ALBERTA PERSPECTIVE

Most Canadians would agree that the Senate of Canada has not done the job for which it was intended. For a number of very compelling reasons, the Senate has been viewed as a largely illegitimate body of the Canadian Parliament since the first decade of Confederation. Yet the members of the Committee are very mindful that an Upper House was an integral component of the agreement which brought about the nation.

As originally intended, the Senate of Canada was to be a body that would give "sober second thought" to legislation proposed and passed by the House of Commons, somewhat removed from the partisan considerations ever-present in the Lower House. Of great significance to the Canada of today is that the Upper House was intended to represent the interests of the regions of the country in the federal legislative process.

Current polls indicate that Canadians have little faith in the Senate primarily because of its method of appointment. This lack of faith was aggravated considerably by Prime Minister Trudeau's last-minute appointment of a number of individuals seen to be worthy only on the basis of loyalty to the Prime Minister. Canadians do not support this method of appointment. The Senate's excellent work in some areas, particularly legislative study and amendment, has received little recognition by the Canadian public in the face of these greater issues. The recent move by the Senate to hold up interim supply required by the House of Commons further added to these perceptions. Canadians have all been exposed to numerous calls for reform of the Canadian Senate; reports, proposals, recommendations, documents, theses, books and discussion papers on the subject abound. Yet Canadians have still to face the negotiation process that must take place to reform the institution so that it can play a significant and much more meaningful role in the Canadian Parliament.

The September 4, 1984, federal election in Canada resulted in an unprecedented 211 member Government with substantial representation from each Canadian province. In the months following that election, the Committee observed that Senate Reform had become a lower priority with some Canadians until the Senate's delay of Bill C-11, The Borrowing Authority Act.

In Alberta, as in some other parts of the country, there is a feeling that regardless of the popularity or sensitivity of the new Government, fundamental changes to Confederation are required in order to ensure that the Western and Atlantic provinces in particular are adequately represented in the federal decision-making process. This belief is common to most Albertans as well as to other Canadians. In the last few years Albertans have experienced feelings of alienation unmatched in past decades of Confederation. These heightened feelings of alienation resulted primarily from the contentious energy and constitutional discussions of the past few years with the former Government in Ottawa. Albertans reacted vigorously against a federal government which was clearly insensitive to this Province's needs. Those reactions allowed for the formation of the considerable separatist movement in the province. The frustrations which spawned that movement still need to be satisfied.

The Alberta Legislative Assembly rose to the challenge to study Senate Reform because of the feelings of Albertans towards the Senate of Canada. In addition, the Trudeau government initiated one of the most recent studies of Senate Reform, carried out by a Joint Committee of the House of Commons and Senate, that recommended an elected Senate with only a suspensive veto, and a single nine-year, non-renewable term. This Committee was, to some extent, a response to that initiative. Most significantly, however, at the time of this writing, there is a belief in Canada that it is time for co-operation between federal and provincial governments. It is the Committee's hope that these recommendations will contribute to this spirit of cooperation and lead to long-term changes for the good of the country.

IV. THE COMMITTEE'S WORK

IV. THE COMMITTEE'S WORK

The Alberta Select Special Committee on Senate Reform was established by a motion of the Alberta Legislative Assembly on November 21, 1983. The Committee was instructed to "examine the appropriate role, operations, functions and structure of an Upper House in the Canadian federal system". Further, the motion called for an "examination of alternative methods of selecting members, geographical representation, and legislative powers and responsibilities of the present Canadian Senate and of other Upper Houses".

Accordingly, the Committee met, established goals and mapped out a schedule of public hearings, meetings, studies and consultations that would provide members with information on how Albertans and others viewed the complex issue of reforming the Canadian Senate. Committee members familiarized themselves with the issue as thoroughly and as quickly as possible. To do so, a wide variety of source documents were consulted and members were provided with briefing material and briefing sessions by the Government of Alberta's Department of Federal and Intergovernmental Affairs.

A timeline was established for activities. The first priority was to understand the views of Albertans on the issue. Advertisements were placed in all major Alberta papers calling for those interested in Senate Reform to come forward. The Committee received 272 responses from individuals and organizations in Alberta. On the basis of these responses, locations for public hearings were established throughout the province. Taking into account the most convenient and central locations for the majority of respondents, the Committee set public hearings for Grande Prairie, Edmonton, Red Deer, Calgary, Medicine Hat and Lethbridge. The Committee then advertised the hearings and wrote directly to those interested individuals and organizations. Some chose to come forward with written submissions, others chose to appear in person, and others did both. Ninety two submissions were received from groups and individuals representing a wide cross section of Alberta society. For example, political organizations such as party constituency

associations, the Western Canada Concept, and the Communist Party; interest groups such as the Canada West Foundation, the Alberta and other Chambers of Commerce, and the Alberta Union of Provincial Employees, as well as numerous individuals, Members of Parliament and academics made submissions. The Committee was very impressed with the desire of Albertans for change and their thought provoking presentations.

Of Albertans who responded to the Committee, 52% indicated their support for a reformed Senate directly elected by the people of Canada, with equal representation by province and with powers that allow it to be effective. These proposals can be labelled the "Triple E" Senate proposals which have already gained considerable support.

Another group of Albertans (17.5%) making representations to the Committee support direct election of the Senate and are not as adamant about or do not support equal representation. A tellingly low 2% of Albertans support the status quo while a similarly small number (3%) favour abolition of the Senate. Separate meetings with Albertans, including Senator Ernest Manning, representatives of the Canada West Foundation and members of the Alberta NDP caucus contributed a great deal to the deliberations.

The Committee met with colleagues in other provinces — with Premiers, Opposition Leaders, Intergovernmental Affairs and other Ministers, Members of Government and Opposition caucuses and officials, and officials in Washington. The Committee also met with members of the Joint House and Senate Committee on Senate Reform, members of the Royal Commission on the Economic Union and Development Prospects for Canada (the Macdonald Commission), with Ambassadors and High Commissioners from other nations, with delegations of elected officials from Germany who visited Alberta, and with members of the academic communities in Alberta and other provinces. The Committee therefore was provided with extensive information on how Senate Reform is viewed, not only by Albertans but also by other Canadians, and the Committee gained knowledge of Upper Houses in other countries from their officials.

Once the initial study was completed, public hearings and series of meetings were held followed by a preliminary "retreat". There was a potential difficulty in reconciling the strong support of Albertans for a "Triple E" Senate with the lack of support for elements of that proposal in other provinces. In addition, there were concerns regarding the repercussions of an elected Senate in the Canadian system of government and the Committee desired further feedback on these concerns. Consequently, the Committee wrote for further clarification to those Albertans who had made submissions or presentations. A copy of the letter sent is appended to this report. The responses received from these letters confirmed the initial conclusions. Albertans want an elected Senate with effective powers and equal representation from each province. Although most Albertans recognize that such a Senate will change the nature of the Canadian system of government and although in some cases they are not clear how it will be beneficial or even if it will be, they believe very strongly in the need for such a Senate. The importance of the role which a reformed Senate would have in representing the views of the provinces in the federal decision making process make uncertainties secondary.

At the same time, the Committee wrote back to colleagues in other provinces to express the strong response in support of a "Triple E" Senate which was received in Alberta and to request their response to that position. Initially, many provincial and federal legislators were "lukewarm" on the issue. Few governments and oppositions have formal positions on the issue and few of the representatives in the more populous provinces are excited about reform, although the Committee believes that they may support a fair and equitable change to the institution. The Committee also believes that the majority of Canada's legislators think that reform of the Canadian Senate is long overdue.

Although the vast majority of Canadian politicians are, by necessity, concerned with responding to the more immediate and critical issues facing their electorate, the Committee was impressed by the keen desire for change expressed by most and believe that Canada's legislators would willingly respond to and participate in a genuine move for reform.

V. RATIONALE BEHIND THE COMMITTEE'S RECOMMENDATIONS

V. RATIONALE BEHIND THE COMMITTEE'S RECOMMENDATIONS

The purpose of this section of the report is to outline in some detail the rationale for the recommendations and the issues that were considered, prior to arriving at the decision that the Senate of Canada should be **elected**, should have an **equal number** of Senators representing each province and should possess **effective** powers.

A. THE PURPOSE OF THE CANADIAN SENATE

IT IS RECOMMENDED THAT

The Senate of Canada should maintain as its primary purpose the objective established by the Fathers of Confederation, namely to represent the regions in the federal decision-making process.

In addition,

a) the Senate should continue to act as a body of "sober second thought";

b) another original purpose of the Senate, that is, to represent property owners, should be abandoned immediately;

c) the Senate should not be a forum for intergovernmental negotiations.

The Committee reached the conclusion that the role of the Upper House in the federal decision-making process is indeed quite straightforward. The Canadian Senate's primary function, as envisioned by the Fathers of Confederation, is to represent provincial viewpoints in the federal decision-making process. The Committee does not believe the Senate should engage in intergovernmental negotiation. Instead, as set out in recommendation 4(a), the Committee suggests that regular First Ministers' Conferences fulfill this function.

It is the Committee's belief that the Senate would not be the appropriate forum for intergovernmental negotiations as Senators should be directly elected representatives of the people, not government, as is presently the case in the Upper Houses of other nations, notably, the German Bundesrat. In the German parliamentary system, the provincial (Laender) governments delegate members to an Upper House; intergovernmental negotiation is then an obvious by-product. The directly elected Upper Houses of other nations, for example, Australia and the United States, do not fulfill a role in intergovernmental negotiation.

To give the directly-elected Canadian Senate even limited authority in the area of intergovernmental negotiations would complicate and blur the Canadian governmental process rather than encourage smooth intergovernmental negotiations.

In addition, the Senate should fulfill the function of "sober second thought". This is a valuable mechanism in the federal system. The present role of legislative review which the Senate fulfills is one which is often highly constructive. The benefit of having an effective body representing provincial interests in the federal legislative process reviewing federal legislation would continue to be invaluable.

The other original purpose of the Senate as a body representative of property owners should be abolished. The present requirement that Senators must have a minimum of $4,000 in property (and/or assets) is a holdover from the past when property holders were singled out as a group to be specially represented in government.

The Committee came to the preceding conclusions regarding the purpose of the Canadian Senate following substantial deliberation. Some individuals with whom the Committee consulted felt the Senate of Canada must act only as a body of sober second thought. While the Committee has concluded that this is indeed a major function of the Canadian Senate and notes that it is the primary role of the Senate in many unitary states, a federal state such as Canada requires, first and foremost, that its "parts" be represented in the federal decision-making process.

It is therefore appropriate that a role of "sober second thought" be the second most important function of the Canadian Senate, but not the first.

Various proposals studied suggested that the Senate should represent special interest groups. For example, it has been proposed that the Senate should represent the interests of women, native peoples, business or labour, to name but a few. While the Committee concluded that there is a great deal of merit in having the Senate as representative of as many viewpoints as possible, no practical or equitable way can be seen whereby Canadians could determine which "special interests" warrant representation in the Senate. Any political body should represent all citizens and by doing so will provide representation for special interests.

B. METHOD OF SELECTION AND BASIS OF REPRESENTATION OF NEW SENATE

IT IS RECOMMENDED THAT

a) The tenure of current Senators should be terminated through an equitable severance process.

b) The termination of tenure should be accomplished as quickly as possible to faciliate an immediate move to the new system.

It has become evident to the general public, and those intimately involved in the political process in Canada, including Senators, that while the current Senate has fulfilled many useful functions, and that while there are a number of individuals in the Senate who work very hard to carry out their responsibilities, the Upper House does not have the faith of the Canadian public. This is primarily, the Committee believes, because of the method of appointment. It is clear that this method of appointment inhibits Senators from fulfilling what should be their primary function of representing the provinces in the federal decision-making process. It is furthermore very apparent that the present method of appointment is one which is abhorred by the Canadian public as representing patronage. The Committee believes Canadians wish to see the current Senate membership changed as quickly as

possible. This does not mean, however, that present Senators should be ineligible for membership in the new Senate.

In considering how current Senate membership could be changed, the Committee looked at a number of possibilities. The underlying criterion for all possibilities is, of course, that of fairness to current Senators, while at the same time ensuring rapid transition to a reformed Senate.

The Committee strongly believes that any proposal that meets these two points should be considered.

One possibility would be to encourage Senators to voluntarily resign their positions, offer them full retirement and offer them the opportunity to retain the honorary title of Senator. For those Senators reluctant to do so, perhaps a five-year phase-out plan on the basis of service could be considered as follows:

a) **A Senator who has served twenty years or more would be allowed one more year of service;**

b) **A Senator who has served fifteen to twenty years would be allowed two more years of service;**

c) **A Senator who has served ten to fifteen years would be allowed three more years of service;**

d) **A Senator who has served five to ten years would be allowed four more years of service;**

e) **A Senator who has served less than five years would serve an additional five years.**

The proposal outlined very generally above would provide for the total phase-out of the current Senate within five years while allowing some experienced Senators to pass on their knowledge to the new Senate.

IT IS RECOMMENDED THAT

The Senate should consist of 64 Senators, six representing each province and two representing each territory;

Senators should be elected on a first-past-the-post basis, a system now in use in federal and provincial elections.

Senators should represent constituencies whose boundaries are identical to provincial boundaries;

Senators should be elected for the life of two legislatures;

In each province, three Senators should be elected during each provincial election, with each voter being able to vote for three candidates;

The qualifications for candidates to the Senate should be the same as those for members of Parliament;

Upon winning an election, Senators should be required to resign from any provincial or civic elected office held they hold.

After intense study and reflection, the Committee has arrived at the recommendation that Canada's Senate should be elected on a first-past-the-post basis. By "first-past-the-post", is meant the basis of election familiar to most Canadians: the candidate obtaining the highest number of votes, wins. In reaching this conclusion, the Committee looked at a number of alternatives to the system of direct election, in particular numerous systems of proportional representation. The Committee reached the conclusion that any of the systems of proportional representation could result in more, rather than less, control over election of Senators by political parties. A paper on proportional representation is included in the background documentation at the end of this report. The Committee further recommends that six Senators represent each province and two Senators represent each territory for a total of what would presently be a 64 member Senate.

In the event that the Northwest Territories divides into two separate territories, each territory would be entitled to two Senators. And, if a territory attained provincial status, it would be entitled to six Senators.

The Committee looked in depth at the various methods of selection: appointment, direct election, and indirect election, and at the alternatives that exist for basis of representation: representation by population, equal regional representation, provincial representation and a weighted system of representation. A discussion of each alternative follows.

1. Alternatives and Issues Involved in the Method of Selection

There are basically three main approaches to the appointment of Senators that could be taken:

a) Federal Appointment

As was touched upon earlier in this report, the vast majority of Canadians find the present process of appointment to the Senate by the federal government the most negative feature of an institution which is generally perceived to lack credibility. This lack of credibility is not a reflection on the abilities, qualifications or intentions of present Senators. Rather, it is very clear that modern democratic society limits the power and authority of a non-elected body. It would generally be agreed that the Senate of Canada is an ineffective institution today because Senators realize the limits of their power.

Finally, as indicated previously in this report, the present method of federal appointment does not allow for the effective representation of regional viewpoints in the federal decision-making process.

As the majority of the population views an appointed system so negatively, the Committee discarded the option as one that would simply not be acceptable. The key elements for acceptability of a method of selection to the people of Alberta appear to be legitimate representation through a democratic means of selection allowing for effective regional representation. The Committee heard this point of view expressed time and time again in meetings with Albertans and throughout the public hearing process.

b) Provincial Appointments

In studying the potential for a system which would include provincial appointment to the Senate, the Committee reviewed the extensive proposals of this nature put forward by the Government of British Columbia (1978), the Quebec Liberal Party (1980), the Task Force on Canadian Unity (1979), the Canadian Bar Association (1978), and the Alberta Government Discussion Paper (1982).

It was noted that the main arguments in favour of this method of appointment suggest that the major function of the Upper Chamber in any federal system is the representation of provincial or state interests in the national decision-making process, and the best method to ensure such representation is direct provincial appointment.

The majority of the provincial appointment proposals, for example Government of British Columbia (1978), promote the concept Senators would be instructed delegates appointed from the Legislature or the Cabinet of a province. These proposals are very similar to the German Bundesrat model and have many positive features. For example, Senators appointed as delegates from their provincial governments would speak with the same voice as their provincial government. Under such a system, the Senate would

become the forum for intergovernmental negotiation in the country, and for reasons which are articulated in the rationale under the recommendation that First Ministers' Conferences be given a more formally sanctioned role in our system, the Committee studied this possibility and rejected it.

An Alberta discussion paper supported provincial appointments to the Senate as a means of improving federal-provincial relations, but did not however recommend that the Senate replace other forums of intergovernmental relations, such as First Ministers' Conferences.

A definite problem which the Committee perceives with a provincially appointed Senate is that Canadians want a system in which they have a direct relationship with their Senator. The method of provincial delegation would not allow such a direct relationship. The Committee did not receive much support for this concept from Albertans, and it is also possible that such a system of appointment would not be acceptable to the federal government. The Goldenberg-Lamontagne Report argued that provincial appointments "would give to the executive branch of the provincial order of government suspensive and veto powers over the legislative branch of the federal order of government." This is another argument often used against provincial appointment.

c) Federal and Provincial Appointments

There are three commonly suggested methods of making joint appointments:

The first is that the federal government could continue to make all appointments but would have to appoint Senators from a list of candidates submitted by the provinces. This approach was advocated by the 1972 report of the Special Joint Committee on the

Constitution of Canada and the 1980 Goldenberg-Lamontagne Report. A similar approach is to have the Federal Government make all appointments but the appointments would be based on the recommendations of a joint nominating committee of elected Members of Parliament and provincial legislatures.

The second approach is the reverse of the first: the provinces would appoint Senators from a federal short list.

The third option often discussed for making joint appointments would be for the federal government to make one-half of the appointments and for the provincial government to make the other half. This approach was put forward in 1978 in the proposed federal Constitutional Amendment Bill (Bill C-60). Under Bill C-60, half the membership of the new House would be chosen by the House of Commons after each federal election, and the other half would be chosen by the respective provincial legislatures following each provincial election. All appointments would be based upon proportional representation.

The Committee seriously considered these alternative methods of appointment as representing potential improvements over the present system of Senate appointments. The Committee considered that joint appointments would provide for greater provincial representation in the federal decision-making process and be compatible with the Canadian parliamentary tradition. However, the Committee arrived at the conclusion that joint appointments would not alleviate the difficulties of the present method of selection. The electorate would still be concerned about the appointment of individuals to the Senate by governments.

If the federal and provincial governments each appointed half of the Senate, it would still largely be in the hands of the Lower House. This factor would, of course, not allow for the necessary independence of the Upper House, thereby hindering its ability to ensure that the viewpoint of the regions was part of the federal decision-making process.

Although more Albertans proposed joint appointments than maintenance of the status quo, the relative percentage of supporters of these proposals to overall presentors at our public hearings was minimal.

d) A Directly Elected Senate

Since the early 1980's, increased attention has been focussed on the possibility of an elected Senate for Canada. The Canada West Foundation and the 1983 federal discussion paper both advocated an elected Senate. The Canadian Bar Association, which supported a provincially appointed Senate in 1978, supported an elected Senate in its presentation to the Joint Parliamentary Committee on Senate Reform. The Government of Prince Edward Island has been a long-time advocate of an elected Senate.

As mentioned earlier in this report, an overwhelming majority of Albertans who came forward to the Committee with their views on this issue emphatically called for a Senate directly elected by Canadians. This viewpoint was supported with numerous comments of disdain for the present appointment process. Most Canadians, the Committee believes, want Senators who speak directly for them as individual members of a democratic society rather than Senators who speak for political parties or governments. Albertans want strong and legitimate representatives of their provincial interests in the federal decision-making process.

Support for an elected Senate in Alberta has gained considerable momentum over the past year and a half. The "Triple E" movement (as discussed in Section III of this report) is very active in Alberta, even following the election of a federal government which most Albertans feel is much more representative of their points of view than was the last.

The Committee studied very carefully the pros and cons of an elected Senate in the Canadian system of government. Some members of the Committee had initial reservations about such a drastic change to the federal governing process. These are legitimate fears that, if an elected Senate is not properly constituted, it would become an extremely powerful body that could cause confusion between federal and provincial governments rather than provide effective representation.

The Committee also had some concern over the cost of Senate elections to the Canadian people and the real potential for conflict between the House of Commons and the Senate. Despite these points of view and others, the Committee came to the unanimous conclusion that an elected Senate for Canada is essential for a necessary balance in the system of government. The need for an effective provincial voice in the federal legislative process is long overdue. If steps are not taken to satisfy this void in the process of government, there may be serious repercussions. The only possible conclusion was to recommend a directly-elected Senate. With a mandate from the people, the Senate would enjoy legitimacy and would be able to exercise fully the significant political and legislative powers necessary to make a valuable contribution to the Canadian Parliament.

2. Alternatives and Issues Involved in the Basis of Representation

In determining the composition of the Senate, the Committee addressed the essential question of whether representation in the Senate should be based upon representation by population, equal "regional" representation, equal provincial representation, or a weighted system of representation.

a) Representation by Population

This alternative is not a popular proposal. The majority think that it would duplicate the representation in the House of Commons and thus not provide the balanced provincial viewpoint required. The Committee rejected this option.

b) Equal "Regional" Representation

In this case, the Committee used the term "regional" to refer to Canada's historical interpretation of the word. At Confederation, representation in the Senate was based on regional divisions which in the case of Ontario and Quebec conformed to the new provincial boundaries. The two Maritime provinces were treated as one region. In 1915, the Senate was reconstituted to create a fourth senatorial region in the West with six members from each of the four provinces, for a total of 24 members. This, of course, was so designated because the population of the western region was then very small. Six more Senators were added in 1949 with the admission of Newfoundland. In 1975, the Constitution was amended to add one Senator each for the Yukon Territory and the North West Territories. Since 1975, the population growth has resulted in the present situation in which provinces such as new Brunswick and Nova Scotia, with populations of approximately one half million, have ten Senators each, while the western provinces, with four and five times the population, have six Senators each. Those who

support this concept of a Canada divided into "regions" rather than provinces are few in Alberta. Some individuals who appeared before our Committee supported this point of view, but many more were adamantly against these artificial boundaries. This option was also rejected.

c) Provincial Representation

The majority of Canadians, the Committee believes, will argue that Canada is a federation of provinces, not regions. A number of reform proposals to date have advocated that the unit of representation in the Senate should be the province. Certainly, the majority of Albertans heard from put forward this point of view although there were some who did not support equal representation by province, mainly because they believed that the more populous provinces would never agree. The Committee studied all aspects of this issue and concluded that only equal representation by province would afford Canadians the balanced process of federal government which they deserve. The Committee strongly adheres to the majority point of view in Alberta that Canada is made up of equal partners.

d) Size of the Senate

The Committee recommends equal representation by province in the Senate. One consideration was size. It was concluded that the Senate should consist of 64 members: six from each province and two from each territory.

The Senate should be significantly smaller than it is now. While there were initial concerns that there would not be enough Senators to carry out effectively the work required of them, the Committee believes that fewer Senators will result in increased efficiency, thus minimizing these concerns.

Minimizing costs was certainly another factor considered in reducing the number of Senators. Overall, the most compelling reason for keeping numbers in the Senate to a minimum is a desire to facilitate effective direct election of Senators by the electorate. Choosing a greater number any one time could cause confusion and dissatisfaction among the electorate.

e) Method of Election

Senators should be elected on a first-past-the-post basis. Alternatives to this method of election such as systems of proportional representation were considered carefully. Additional information is given in the background documentation. The Committee examined proportional representation in some depth because of the concern of some Canadians that first-past-the-post elections could allow for party control and unfair representation. The Committee rejected these concerns for two main reasons. The Canadian tradition of election practices leans towards the first-past-the-post system. While there may be many benefits to systems of proportional representation, where they have existed in Canada, they have often been abolished. For example, in Alberta, it was just over a decade ago that a proportional representation system for civic elections was abolished. The Committee recognizes that the first-past-the-post system presents some problems. However, the Committee strongly recommends major changes to Canada's federal system of government. Those changes are radical enough without injecting further change into the system at this time.

f) Senators' Constituencies

Senators should represent constituencies whose boundaries are identical to provincial boundaries. After detailed consideration of

other proposals, the most recent being the recommendation of the Joint Committee of the House of Commons and the Senate that Senators represent smaller constituencies, the Committee believes that to truly represent a province in the federal decision-making process, a Senator should represent the province as a whole.

Smaller constituencies would more easily facilitate elections, help to control costs and would have the benefit of allowing a Senator to be closer to the people that he or she would represents, but they would make Senators somewhat indistinguishable from Members of Parliament. Senators would be forced to represent the viewpoint of only a part of their province. With smaller constituencies, Senators could become involved in local issues and concerns rather than representing their province as a whole in the federal decision-making process. Province-wide representation would permit the Senators to specialize in particular topics such as energy or agriculture where they have special expertise, rather than having to worry about the local interests of a constituency which are best dealt with by the Member of the House of Commons. As effective regional representation is the Committee's primary goal for a reformed Senate, province-wide constituencies for Senators are advocated, despite drawbacks.

g) Length of Term and Tenure of Office

Senators would be most effectively elected during provincial rather than federal election campaigns. If Senators are to represent a provincial viewpoint in the federal decision-making process, the perspective of the province will be more apparent during a provincial election campaign as opposed to a federal campaign. In other words, this process would see Senators running for election at the same time

as citizens are electing their provincial representatives, thereby ensuring a healthy dialogue between the electorate and their Senators on issues of crucial provincial interest.

The Committee addressed the issue of political party control over Senators. While party involvement in Senate elections may be unavoidable, the Committee wished to devise a means whereby national party influence over Senators would be minimized. Senators should caucus on provincial rather than party lines in order to best represent their province's interests. If Senate elections are held concurrently with provincial elections, Senators will be less likely to be tied to national parties and their interests.

Senate elections should be staggered so that three Senators are elected during each provincial election for two terms of office. Since each of these Senators will represent an entire province, the electors may cast one vote for each of the three positions.

To function properly, Senators need a stable period in office. Senators should be eligible for re-election. The Committee suggests that Senators should be eligible for re-election in order to promote the utmost in accountability to their electorate.

A staggered term of office ensures that some continuity of the representation of each province in the Senate. In addition, each new Senator would have the benefit of experience within his or her provincial delegation.

Finally, staggered terms of office would allow the Senate to conduct its business on a continuous basis, and therefore not inhibit the federal legislative process in any way (see the following section on the "Powers of the Senate").

h) **Eligibility For Office**

The Committee recommends the qualifications for election to the Senate be the same as those for election to the House of Commons. As noted earlier in the report, the Committee strongly recommends that the property qualification be abolished and that the basic qualifications for the office of Senator be such that the participation of all citizens over the age of 18 is possible.

Upon winning an election, Senators should be required to resign from any provincial or civic elected office. The job of Senator is far too onerous to allow for other offices, and, of course, Senators should not be placed in a potential conflict of interest position. They should not however have to resign such positions before seeking election to the Senate.

Senators should not be eligible for appointment to Cabinet. The reasons for this recommendation are straightforward. Senators should be as independent as possible from the House of Commons so that they can play an effective role as the body of sober second thought and in their representation of the regions. The possibility of an appointment to Cabinet would remove the incentive for Senators to act independently, and in addition, would allow the principle of Cabinet solidarity to overrule Senators' ability to be representatives for their provinces.

The recommendation of a position of chairmen of provincial delegations in the Senate (see II.C.(c) of this report) would provide growth opportunities for Senators.

3. Powers of the Senate

IT IS RECOMMENDED THAT

a) The Senate should have the power to initiate any legislation except a money or taxation bill;

b) Notwithstanding (a), the Senate should have the power to initiate supply resolutions relating to the Senate's own operational budget;

c) The Senate should have the power to amend any bill, after which the House of Commons would consider the amendment;

d) The Senate should have the power to veto any bill except a supply bill;

e) The Senate should retain the existing 180 day suspensive veto over constitutional issues;

f) The House of Commons should have the power to override a Senate veto on money or taxation bills by a simple majority;

g) The Senate should vote on a money or taxation bill within 90 days and on other bills within 180 days, after it is sent by the House of Commons;

h) The House of Commons should be able to override any amendment (veto) passed by the Senate on a bill other than a money or taxation bill, by a vote that is greater in percentage terms than the Senate's vote to amend;

i) Non-military treaties should be subject to ratification by the Senate;

j) All changes affecting the French and English languages in Canada should be subject to a "Double Majority" veto, that is, a majority of all Senators combined with a majority of French-speaking Senators or English-speaking Senators, depending on the issue.

Much discussion has been devoted to this issue. Many put forward the viewpoint that the difficulty in delineating powers of a reformed Senate is in maintaining the parliamentary tradition that the Executive is responsible only to the Lower House.

The Committee strongly recommends that a reformed Senate must be provided with "power" in order to live up to its purposes.

In Canada today, the Senate possesses power but does not exercise it because Members and non-members regard it as lacking credibility. As a result, Canadians are witnessing an imbalance in the federal system of government. Canadians do not have an institution to provide effective "sober second thought" to legislation nor to represent a provincial perspective in the federal decision-making process. The Committee recommends a reformed institution which will have credibility in the eyes of the Canadian public because it will be directly elected.

The issue most often raised is whether or not the Senate should have a veto over the legislation of the House of Commons and if so, whether the veto be suspensive or absolute or a combination, depending upon the issue.

Another general category of potential powers of the Senate can be dealt with under "Other Legislative Authority".

a) Veto Power for the Senate

i) Suspensive Veto

To resolve concerns that strong veto power for the Senate would challenge the ultimate authority of the Lower House, the Committee looked very carefully at the whole area of veto powers. Those who support a suspensive veto only for a reformed Senate suggest that while it could not prevent a determined government from passing legislation to which the Upper House may be opposed, it would be sufficient to bring national attention and debate to issues of concern to particular provinces or regions. Political imperatives, partisan politics and the pressures of public opinion may be for accommodation,

but ultimately the House of Commons would have the final say. This point of view was rejected because of a fundamental belief that a reformed Senate must have power to be effective.

The Committee recommends that the Senate maintain a 180 day suspensive veto over constitutional issues. The constitutional amending process has been established to provide equity and fairness to all partners in Confederation. A suspensive veto is sufficient in this area because of the requirement that the elected Assemblies of either two-thirds of the provinces, having at least 50% of the population, or all the provinces (depending upon the nature of the amendment) and the House of Commons must accept the amendment. This requirement ensures that the interests of the provinces will be protected.

Canadians worked for many years to achieve this amending formula which requires provincial agreement before changes can be made. To allow more than a suspensive veto by the Senate over constitutional issues would duplicate provincial viewpoints and consent in the process.

ii) **Absolute Veto**

The Senate should have the power to veto any bill except a supply bill. In addition, the House of Commons should be able to override a Senate veto on money or taxation bills by a simple majority. Bills, other than money or taxation bills, would require a larger majority. As is true of the West German Parliament, if a vote is passed by 60% in the Senate, the House of Commons must override it by a minimum of 60% +1%. This would ensure the supremacy of the House of

Commons, but that supremacy could only be utilized where it was clear that representatives elected on a representation by population basis were very united. A time limit of 90 days should be placed on the Senate when considering a money or taxation bill so that the workings of government would not be indefinitely halted in the face of conflict. In the Committee's view, a limit of 180 days should be placed on all other legislation. This would ensure that the Senate could not hold a bill indefinitely without voting on it.

iii) **Other Legislative Issues**

The Senate should have the power to initiate any legislation except a money or taxation bill. The Senate should have the power to initiate supply resolutions as they might relate to the Senate's own needs, and it should have the power to amend any bill. Only the Senate can determine its needs. It will of course be responsible to the electorate for its votes.

Again, these recommendations are in keeping with the basic premise that an elected Upper House with no or very limited power in the federal decision-making process would quickly become useless.

iv) **Further Issues**

The Committee also studied numerous other suggestions for particular powers appropriate to a reformed Upper House. Whether or not the Senate should play a significant role in protecting language and cultural rights was considered. In this regard, the Committee recommends that any changes

affecting the French and English languages in Canada be subject to a "Double Majority" veto: a majority of all Senators combined with a majority of French-speaking Senators or English-speaking Senators, depending on the issue, would be required to change language rights. The majority of Albertans heard from were supportive of this proposal. Candidates to the Senate would declare themselves French or English-speaking at the time of being nominated and would be judged in that way by the electorate.

Various other potential powers for an Upper House, for example, the approval of senior civil service appointments and appointments to the Supreme Court, belong to other federal bodies.

Senior civil service appointments are best left to the discretion of the federal executive. First Ministers' Conferences should take on the task of approval of appointments to the Supreme Court.

Another area in which the Senate should possess power is in the ratification of non-military treaties. In many instances, non-military treaties involve direct social or economic repercussions for a particular province or provinces.

In its role of protection of regional interests, the Senate may perform a most useful function in this area. The Committee recommends the limitation of power to non-military treaties in recognition of the need for security and quick action involved in military treaties.

4. Senate Organization

IT IS RECOMMENDED THAT

a) The traditional opposition and government roles in the current Senate be abolished, including the positions of Government Leader and Opposition Leader;

b) Senators should be physically seated in provincial delegations, regardless of any party affiliations;

c) Each provincial delegation should select from its membership a chairman; chairmen should sit at the pleasure of the provincial delegation;

d) A Speaker should be elected by a majority of the Senate at a specified time every four years, and the Senate may, at any time, initiate an election for Speaker by a two-thirds vote;

e) The ten provincial chairmen, headed by the Speaker of the Senate, should constitute a "Senate Executive Council";

f) The Senate Executive Council should determine the order of business of the Senate, appointment of committee chairmen and membership of committees;

g) The characterization of legislation, that is, the determination of whether a bill is or is not a money or taxation bill, should be carried out by joint agreement of the Speakers of the House of Commons and the Senate, in accordance with the British definition of a supply bill;

h) Senate Executive Council members should receive remuneration and staff assistance in addition to that received by other Senators;

i) Senators should not be eligible for appointments to Cabinet.

The recommendations outlined above represent, to the best of the Committee's knowledge, the first suggestion of radical reform of the British parliamentary system as it relates to one of its institutions. These recommendations are unique in that changes are proposed which would see the Canadian Senate operate in a different manner from any other Parliament in the Commonwealth.

These recommendations are made following careful study of other Upper Houses, with particular attention to the Australian Senate, because Australia's government is Canada's closest parallel among those governments based upon the British parliamentary system. Australia has population imbalances of some magnitude and it is the only country in the British parliamentary system to have an elected, equal Senate, as is proposed for Canada.

Although the Committee did not have an opportunity to visit Australia, it is strongly recommended that First Ministers, or their representatives, consider such an experience prior to final implementation of Senate Reform.

Many individuals expressed concern regarding central party control of the Australian Upper House. It is the Committee's hope that the recommendations which are proposed for the internal organization of Canada's equal, elected and effective Senate would not create similar concerns with party control in Canada.

As mentioned earlier in this report, the method by which the Senate has functioned to date has served to discourage the representation of regions and has encouraged and strengthened party ties by an established opposition and government in the Senate. At present, the officers of the Senate are directly answerable to the officers of the House of Commons, the Prime Minister appoints the Government Leader, Deputy Leader and Speaker of the Commons, and the Opposition Leader in the House of Commons appoints the Opposition Leader in the Senate. As a result, Senators are tied to House of Commons caucuses. The Committee recommends a method whereby the party influence in a reformed Senate could be reduced and the function of Senators to provide effective regional representation and the role of sober second thought is realized.

The Committee noted an absence of recommendations in other reports and studies on how the internal organizational structure of the Senate might be set in order to reduce potential party influence of Senators. Few studies have addressed the issue of party influence in the manner which the Committee has and the Committee strongly believes that the proposed approach is unique and highly workable.

The Committee recognizes that it would be extremely difficult, if not impossible, to eliminate party influence over Senators. However, changes can be made to the internal organizational structure which will go a long way towards lessening this influence. The Committee recommends that the traditional positions of Opposition and Government Leader and their deputies in the Senate be abolished. The adversarial role of Government versus Opposition should not be present in the Senate, as Senators should be freed from these overtly partisan roles. The primary focus of the Senate should be to attempt to bring together regional viewpoints as they relate to national issues.

It is recommended that Senators be physically seated by "provincial delegations", regardless of party affiliation. This physical arrangement alone would go a long way towards lessening the role of parties. If Senators are in physical proximity with fellow party members, there would be strong incentive for them to represent their party in their speeches and provide Government or Opposition perspectives. If they are seated in provincial delegations, they would be inclined to represent provincial viewpoints. The seating in the Senate Chamber should be arranged in a horseshoe or some other appropriate way to reflect the provincial grouping.

Each provincial delegation should select a chairman from its membership. The election of a chairman would strengthen the delegation's image. Senators would see aspiring for the position of

regional chairman as a potential career as opposed to the allure of the House of Commons and a possible Cabinet post.

In this dramatically changed Senate, the Speaker would play a much greater leadership role than has been traditional. Power and influence would be likely to gravitate to the Speaker's role over the years.

The Speaker, in addition to fulfilling the traditional role of Chairman of the Senate, would be spokesman and leader of the Senate Executive Council.

The responsibility for negotiation with the House of Commons on sensitive issues would likely most often fall on the Speaker's shoulders. It would therefore be crucial that the Speaker answer to Senators directly, rather than to the party leader in the House of Commons. The Committee strongly recommends that the Speaker be elected at regular intervals every four years.

It is also important that the Senate possess the power to terminate a Speaker's term at the Upper Chamber's will, and be able to appoint a new Speaker, with a two-thirds vote.

The Committee also recommends that the ten provincial chairmen and the Speaker constitute a "Senate Executive Council". The role of this Council would be to determine the order of business of the Senate, appoint committee chairmen and the selection of committee memberships and other necessary functions. In addition, the Committee recommends that the characterization of legislation, for example, the determination of whether a bill is or is not a money bill, should be carried out by joint agreement of the Speakers of the House of Commons and the Senate. In this way, Senators would strive to work co-operatively with other members of their provincial delegations and some may aspire to the position of provincial chairman.

5. First Ministers' Conferences

Under the present federal government, federal-provincial relations are much more harmonious and conciliatory than in the past. The Committee applauds the very recent decision of our First Ministers to meet on a formalized annual basis and the Committee goes further to recommend that the annual meeting of First Ministers be entrenched in the Constitution. In addition, it is recommended that the First Ministers' Conference be a body charged with responsibility to ratify appointments to the Supreme Court and to approve, by majority vote, any use of emergency powers by the federal government.

The Committee debated these two areas at some length. Along with many other Canadians, the Committee is very concerned that the very able individuals who compose the Supreme Court should be representative of regions. The recent amendments to the Constitution which will see the Supreme Court take a very active role in shaping the laws which govern Canadians heighten this need. The First Ministers' Conference is a more appropriate body than the Senate to perform this function. The direct input of provincial and federal leaders into these very important appointments is essential.

6. Emergency Powers

Although any federal government would only resort to use of this power in the most drastic situations, it is imperative that this power only be executed with the direct approval of the provincial leaders. Communication systems now make this possible.

7. Powers of Reservation and Disallowance

The Committee has also taken the liberty of making recommendations on an issue which some might argue is not within the Committee's terms of reference. These areas were considered, however, because of their

interrelation with the very broad issue of Senate reform. The power of the Governor-in-Council to disallow provincial legislation within two years and the power to refuse or reserve Assent to provincial bills is seen by the Committee to be antiquated and uncessary. It is strongly recommended that these powers be abolished and the question of constitutional validity of provincial legislation be determined, if necessary, by the Supreme Court as has been the case in recent years. It is clear that, given the federal nature of Canada which has resulted in the building of conciliatory, consultative practices over the years, these powers have not been used for many years.

Other safeguards which would be built into the federation, with a reformed Upper House and an institutionalized First Ministers' Conference, would render these powers even more antiquated and unnecessary than they are at present.

VI. SHORT AND MEDIUM TERM POSSIBILITIES

Throughout its deliberations, the Committee spoke with numerous people who suggested that instituting immediate radical reform to the Canadian Senate may be both impossible and perhaps not advantageous to the Canadian people. Such radical change may take time because of the difficulty in reaching agreement necessary for the inevitable and complicated constitutional change which would be required. Some people feel it would also bring about a very dramatic change to the system of government, one that may be better taken gradually.

The Committee listened to this point of view on enough occasions that it felt some attention could be given to changes which could be brought about to the Senate with less difficulty and which had a potential high level of agreement among the partners in Confederation. The Committee looked at changes which would represent improvements over the present Upper House.

It must be emphasized that this discussion in no way represents a retreat from the belief that the Senate of Canada, in order to do the job for which it was intended, should be directly **elected** by the people, with **equal** representation from each province and with powers that allow it to be **effective** in fulfilling its role. What this discussion does represent is an outline of options for interim action. These options should be seen as steps along the way to the ideal of reform, and not as ends in themselves. In this section are outlined options for immediate change in the areas of the method of selection and the basis of representation and powers. The Committee outlines the alternatives in each area along with what their impact and acceptability might be. In the "rationale" section of the report, the Committee looked at some options in each of the areas involved in Senate Reform and although it goes through a similar process in this section, the focus here is to highlight which alternatives for changes would be most acceptable and fruitful as interim possibilities.

A. METHOD OF SELECTION

1. Current Membership

The most important element of change desired by the Canadian people with respect to Senate Reform is to alter the present method of selection. Clearly, for a change in method of selection to occur, the issue of what to do about the present Senate must be addressed. Possibilities for phasing out the current Senate are outlined below.

a) Five-Year Phase-Out

The Committee strongly puts forward this alternative as the most acceptable method by which current Senate membership be changed. This period of phase-out, as recommended for the final form of the Senate, coupled with a fair settlement package for present Senators, has the great merits of benefit and equity. First, a five-year phase-out, based upon years of service, with those who have served the longest being phased-out first, would allow new Senators to reap the benefits of the experience of others for the first while in office. Secondly, this method provides for fairness. Current Senators, who are very capable people, would end their terms of service with some notice and a fair compensation package. The Committee recommends that the five-year phase-out be instituted immediately.

Two other alternatives in this area were considered:

i) Immediate Dismisal

It is often suggested that the current terms of Senators be cancelled immediately. While this method of attrition would allow for the quick creation of new Senators, it would not be fair to present Senators.

ii) **Attrition**

The other extreme alternative would be for Senators to fulfill their term to age seventy-five, or, depending upon their appointment date, until death. This alternative would not allow for an effective Senate to be put into place for perhaps a generation.

As the Committee believes that the momentum for change in Canada is great, however gradual that change may be, it does not recommend this second alternative because of the time involved. The Committee believes that the majority of Canadians would agree.

B. CHANGES TO THE APPOINTMENT PROCESS

If it is impossible to move to election of Senators immediately in Canada, the Committee recommends that certain changes to the present appointment process be instituted immediately which would make the method of selection more palatable and credible in the eyes of the Canadian people. Potential changes to the present process are outlined as follows:

1. Election by MP's and Provincial Legislators

Of all possible modifications to the appointment process until elections can take place, this alternative is probably the most acceptable. This process would see selection of Senators by Members of the Legislature and the Members of Parliament of a given province. It would represent a step towards election and would make the patronage that presently takes place more difficult to institute because of the numbers of people involved in the selection process. It would also allow Senators to provide more adequately the regional voice for which the Senate is intended.

This alternative may prove to be more attractive to a number of provinces than to the federal government as in any given province, provincial legislators would outnumber Members of Parliament. Although this system is not desirable as the end, this alternative could be instituted immediately and would represent a vast improvement over the present system while negotiations take place to institute an election process. A next step could be a confirmation ballot on which electors in a provincial election might vote yes or no on a candidate selected through the above process.

2. Appointments by Provincial Governments

Appointment of Senators by provincial governments was suggested in the discussion paper released by the Alberta Government in 1982 and has been popular over the years with a number of provincial governments. This alternative would provide for the return of the Senate to the purpose of representing the provinces in the federal decision-making process and would likely ensure that provincial governments have a solid and united voice through their province's Senators. However, most Albertans clearly stated that this system would likely replace federal patronage with provincial patronage. It may also be difficult to convince the federal government to take this direction.

3. Federal Appointments from Provincial Short Lists

This alternative could be instituted immediately without the need for constitutional change. This system would, of course, require a commitment from the Prime Minister to appoint individuals to the Senate only from lists forwarded to him by provincial governments. This alternative would ensure that Senators would reflect provincial viewpoints and would make political patronage more difficult because of the involvement of both the provincial and federal governments. However, this alternative is still a long way from the kind of process that

the Committee believes most Canadians want and as it involves the federal government as the final appointee, Senators might still be reluctant to be independent and adequately represent provincial interests.

4. Provincial Appointment from Federal Short List

This alternative would see the provincial governments making final Senate appointments from candidates nominated by the Prime Minister or Parliament. This would improve the system in the same ways that appointments by the federal government from provincial short lists would, in terms of patronage. However, this alternative would probably be less effective in providing representatives who would be concerned with provincial interests. This alternative might also require constitutional change unless done informally.

5. Fifty Per Cent Federal Appointments Combined with Fifty Per Cent Provincial Appointments

The possibility of allowing the provinces to appoint every second Senator is explored in Bill C-60 produced by the federal government. In consideration of this proposal, the Supreme Court of Canada ruled that the federal government could not initiate this type of system without the agreement of the provinces. The energy for the negotiation process that would be required would best be spent on instituting the major recommendations of this report. It must be mentioned that this alternative would balance somewhat the representation in the Senate but would still provide the federal government with effective control of the Senate, thereby making it difficult for the Upper House to exercise its declared mandate to provide provincial input in the federal decision-making process.

C. BASIS OF REPRESENTATION

Given the reality that a change from present seat distribution by "region" in the Senate to the recommended final form of equal numbers by province (or region) is no doubt going to occur only after a long and arduous negotiation process. The Committee looked at alternatives in this area which may immediately be very palatable to all the provinces. The Committee strongly believes that the majority of the partners in Confederation would not resist a change in numbers of representation. However, the more populous provinces will not immediately be willing to accept equality of representations with their other equal partners in Confederation. Given time and a greater recognition of the most valuable role of the Upper House, it is the Committee's hope that they will be convinced of the wisdom of equality of representation by province. In the meantime, the following alternatives exist:

1. Minimum Number of Seats Per Province

An example of this alternative would see all provinces with a minimum of ten seats in the Senate. The western provinces would then receive four more each. PEI would gain six seats and Newfoundland four. This would leave the central Canadian provinces each with the twenty four seats they currently hold. This option would have the benefit of being a move closer towards equality. However, a negative aspect of the option is that it would increase the size of the Senate rather than decrease it.

If the alternative is seriously contemplated, provinces like Alberta will have to determine whether or not the positive aspects of increasing the representation of the smaller provinces in the federal decision-making process outweigh the negative aspect of increasing the number of seats. Some provinces may find it difficult to agree to increase the seats in some of the small Atlantic provinces, particularly Prince Edward Island, to the same number as that of their larger province. It is, of course, the

adamant belief of the Committee that the principle of equality of the provinces in Confederation should be upheld.

2. Increasing Western Seats

It would be much easier to reach agreement among Canadians on an interim arrangement in which the number of seats presently held by western provinces is increased rather than on an interim proposal of a minimum number of seats per province. Historical developments have resulted in some provinces having a greater number of Senate seats than the western provinces, even though the western provinces represent greater numbers of Canadians. This alternative would be a move away from the equality which the Committee strongly supports thus it urges the acceptance of a minimum number of seats per province. The former would, however, be more acceptable than the current situation.

3. Fewer Central Canadian Seats

Another option that would address the imbalance in the Senate would be to reduce the number of seats presently held by Ontario and Quebec. This reduction could only be achieved with great difficulty. Many Quebec and Ontario legislators said that their population would more readily accept an increase in the number of seats held by other provinces than a decrease in their own. Reducing the number of seats in Ontario and Quebec would be desirable because it would reduce the overall number of seats in the Senate, but it would not necessarily be a step towards equality.

4. The Status Quo

There is a great deal of pressure, particularly in Quebec, to maintain the status quo. That, in the opinion of the Committee, is unacceptable to the West which is now very under-represented, and maintenace of the status quo certainly would not represent progress towards equality.

D. POWERS OF THE SENATE

A subject which must be addressed is whether or not the Senate should maintain its current powers, even though it is accepted that the institution is not effective in fulfilling its original mandate and thus lacks credibility in the eyes of the Canadian people. It is difficult to discuss what powers the Senate might have in the interim stage without knowing what the appointment process will be. However, some alternatives were discussed.

A suspensive veto for the Senate might be considered in the interim. In fact, the Senate has only exercised its full veto once in the past 20 years, thus the veto is really an ineffective power. The Commttee came to the conclusion that it would be unconscionable for the Senate to exercise its powers with its current mandate, and in the interim phase, the First Ministers' Conference should take on a strong role of representing the provinces in the federal decision-making process. This is a natural evolution. While the First Ministers are involved in negotiating the final form of the Canadian Senate, they could adequately represent provincial interests in the federal decision-making process.

Relegating the current Senate to a suspensive veto should be considered a short term change, to be re-assessed as Senate reform proceeds.

E. FIRST MINISTERS' CONFERENCES

As noted earlier in this report, the Committee is most supportive of the recent decision of the First Ministers to meet on a regular basis and it is firmly believed that this body, not the Senate, should be responsible for intergovernmental negotiation. The Committee suggests that if no move is made to reform the Senate within a short period, First Ministers' Conferences should be given additional powers.

VII. BACKGROUND DOCUMENTATION

BACKGROUND DOCUMENTATION

This section of the report contains background material used by the Committee in reaching its conclusions. Throughout its mandate, members reviewed an abundance of briefs and studies, but found no one concise document on the issue of Senate Reform.

It is hoped this material will provide the reader with an understanding of the basis of the Committee's decisions and an easy reference on the topic of Senate Reform in Canada.

This section was prepared under the direction of the Committee by Legislative Research Services Section of the Alberta Legislature Library, directed by Mr. John McDonough.

LIST OF BACKGROUND MATERIAL

The following documents have been compiled and presented by the Legislative Research Services Section of the Legislature Library of Alberta for consideration by the Select Special Committee on Upper House Reform:

DOCUMENT A.

THE CANADIAN SENATE

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THE CANADIAN SENATE

I. THE INTENTIONS OF THE FATHERS (1)

In the early 1860's the colonies of British North America were facing enormous political and economic difficulties. The Civil War in the United States and the onslaught of the Fenian raids were seen as a direct and real threat to their security and territorial integrity. As a result of expensive railway and canal ventures the colonies were over-extended financially. They were losing their previously protected British markets and the proposed withdrawal of the Reciprocity Treaty of 1854 by the Americans threatened even greater economic calamaties.

The Act of Union, 1840, uniting Upper and Lower Canada, gave equal representation to each province, though the population of Upper Canada was at that time much smaller than that of its neighbour. However, under a steady stream of British immigration, this situation was soon reversed. The two provinces were very different from one another, representing two distinct heritages, two religious philosophies and two persistent languages. The development of responsible government accentuated the contradictory trends of French Canadian nationalism and demands for "representation by population" by the Clear Grits of Upper Canada. The intense and bitter rivalry between the two provinces finally resulted in a virtual deadlock of the government of the united province of Canada.

(1) This historical summary is almost entirely derived from the analysis of Robert A. MacKay, The Unreformed Senate Of Canada, Revised Edition, Toronto, McClelland and Stewart Limited, 1963. The quotations from historical documents are referenced to their original source: Parliamentary Debates On The Subject Of The Confederation Of The British North American Provinces (Quebec 1985), cited hereafter as the Confederation Debates; as well there is Sir Joseph Pope, Confederation, Being A Series Of Hitherto Unpublished Documents Bearing On The British North America Act, Toronto, 1895, cited hereafter as "Pope's Documents" and Notes by A.A. Macdonald, ed. by A.G. Doughty, entitled "Notes On The Quebec Conference, 1864," Canadian Historical Review, March, 1920; hereafter cited as "A.A. MacDonald's Notes".

This caused the Canadian politicians to look to a larger union where the obstacles to stable government could be overcome. From the first, it was understood that any effort to overwhelm Lower Canada in a unitary state would be unacceptable. The only alternative would be to guarantee Lower Canada's essential rights in a federal union. The Maritime Provinces of Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland were seen as potential partners. It was not a natural combination for the combined population of the Maritimes was only about 30 percent of that of Canada. These colonies were closer to Great Britain than they were to their Canadian counterparts to which they were bound by only the slightest of economic and strategic ties and by a common loyalty to the British Crown. Each colony had its own political institutions, customs and law, peculiar to itself, and to these each was sentimentally and vigorously attached. Any scheme of union, if it was to encompass the Maritime colonies, would have to include adequate guarantees for them as well as for Lower Canada.

The American Civil War, besides being perceived as a threat to the security of the the British North American colonies and thus an impetus to union, had another important influence. It emphasized the apparent weaknesses of the new American federation: an adherence to radical republicanism and mass democracy, a weak central government and aggressive states with the power and will to fight a most terrible, fratricidal war.

In 1864 federation became an issue in practical politics. The threat of war between Great Britain and the United States had dramatically increased the insecurity of the Maritime colonies; their governments agreed to send delegates to a September conference in Charlottetown to discuss proposals for a maritime union. This proposed conference offered a welcome opportunity to the beleaguered Canadian government which obtained permission to send delegates. After some preliminaries, the notion of maritime union was dropped in favour of broader discussions; the conference then adjourned to meet in Quebec City in the following month.

The decisions reached at that conference were called the Quebec Resolutions. Each government took the resolutions back to their own legislatures for detailed discussions. Much of what historians are able to understand of the intentions of the Fathers of Confederation are a result of the ensuing Confederation Debates. These debates, held in the Legislative Assembly and Legislative Council of

the united province of Canada, examined the resolutions passed by the delegates to the Quebec Conference. There is no similar record of the debates in the Maritime colonies. The Quebec Resolutions were eventually taken to London for passage in a British statute through the Parliament of Westminster. This was the Westminster Conference. The Bill, when finally passed by the British Parliament, became the British North America Act, 1867, and as a result of the 1982 amendments it is now the Constitution Act, 1867.

Even at Charlottetown it had been agreed that, if a federation was to develop, there would have to be a strong central government. It was further agreed that the powers of the provincial governments should be enumerated, with the "reserved" powers being given to the central government and not, as in the United States, to the individual states. On the other hand, it was equally important to create safeguards to protect provincial and local interests.

It was understood that any union would have to be ratified by an Act of the British Parliament and that the Act would be subject to interpretation by the courts and any amendment would require the sanction of the British government. Thus the provinces would have the protection of the courts and the British government against any possible encroachment by the central authorities. Even so this was not a sufficient guarantee. The practical difficulty was the question of representation. It was clearly understood that representation in the Lower House would be on the basis of population; otherwise Upper Canada would not participate. The essential concern then turned to creating a representation scheme for the Upper House. The importance of this question in the minds of the delegates at Quebec is demonstrated by the fact that six days out of a total of fourteen were spent discussing the constitution of the second chamber.

The Fathers of Confederation constructed their new federal institutions relying on British traditions, precedents and compromise. Precedent conveniently supplied a bicameral legislature with an appointed second chamber. In the whole debate on the Parliament of Canada Alexander Mackenzie alone seems to have pressed the idea that parliamentary government could be carried on by a single chamber.[1]

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(1) Confederation Debates, p. 426.

The essential features of the proposed Upper House were outlined by John A. Macdonald on the second day of the conference:

> Now as to the Constitution of the Legislature we should have two Chambers, an Upper and a Lower House. In the Upper House equality in numbers should be the basis, in the Lower House population should be the basis....The mode of appointment to the Upper House — Many are in favour of election and many are in favour of appointment by the crown....I am after experience in both systems in favour of returning to the old system of nomination by the crown.... There should be a large property qualification for the Upper House which is then the representative of property.(1)

Two days later he introduced the first resolution on the constitution of the Upper House. It was that the Legislative Council (the title for the Upper Chambers of the then Colonial Legislatures) should represent equally the three divisions, Upper and Lower Canada, and the Maritime provinces. This motion eventually crystallized into a further resolution that 24 members should be allotted to each section.(2)

These motions were strenuously opposed for a time by the Maritime colonies, particularly by Prince Edward Island. Their position was that "the only safeguard the smaller provinces would possess was in the Council," as representation on the basis of population had been granted in the Lower House.(3) Prince Edward Island raised the demand for equal representation for all the provinces in the Upper House, but this was farther than other Maritime delegations were prepared to go.(4) "The delegates from the east," according to Professor Creighton, "exhausted their ingenuity in producing a great variety of resolutions, all aimed at giving the Maritime Provinces a larger membership in the Council, and all unfortunately failing to win the united support of the Maritime delegations."(5) Eventually a compromise was reached; 24 members would be allotted to the Maritime provinces on the basis of

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(1) A.A. Macdonald's Notes, p. 31.
(2) Pope's Documents, p. 11 (Oct. 13); p. 14 (Oct. 17); A.A. Macdonald states that both motions were introduced as one on the 13th. (p. 33).
(3) A.A. Macdonald's Notes, p. 34.
(4) A.A. MacDonald's Notes., p. 35.
(5) Donald Creighton, John A. Macdonald: The Young Politician, Toronto, The Macmillan Company of Canada, 1952, p. 376.

ten each to Nova Scotia and New Brunswick and four to Prince Edward Island. Newfoundland was now omitted from the "Maritime provinces", with the understanding that should it enter the federation it would be allowed four members in the Upper House with the right to press for more. According to a Prince Edward Island representative, his province alone disagreed with the resolution in its final form.(1)

The delegates from Lower Canada secured a provision that would require members from that province to be property-owners and residents of particular districts. This would ensure to both the French-speaking Roman Catholic majority and the English-speaking Protestant minority their fair share of representation in the Upper House. It applied, and still applies, only to Quebec.

The balance of legislative power between the upper and lower chambers was criticized by opponents of the federal scheme as a "cleverly devised piece of deadlock machinery".(2) It was defended on the ground that it was the only possible alternative to current stalemate in the province of Canada; the appointed members would eventually be removed by the passage of time so any deadlock would be a temporary matter.

The absence of any solution for deadlocks between the two Houses subsequently met with the disapproval of the British government, which raised the question at the Westminster Conference. Different drafts were proposed; one would have had Senators appointed for a term of ten years, but with a rotation of one-third of each division's membership retiring after three years. Another proposal was to limit the Senate to a suspensive veto. These suggestions were abandoned but a final proposal was accepted. By special direction of the Queen (in effect the Imperial government) three or six additional members might be added on condition that each of the three divisions would be equally represented in the increase. This was and remains the only constitutional mechanism for resolving difficulties between the Houses. It is further limited in that additional appointments would be made only in the event of serious obstruction. Once additional senators are appointed under this procedure, no further requests can be considered until each division had returned to its full complement of twenty-four. These provisions were designed to prevent any

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(1) A.A. Macdonald's Notes, p. 35; Pope's Documents, p. 14.
(2) Christopher Dunkin, an outspoken critic of the confederation plan, was the member speaking, A.A. Macdonald's Notes, p. 36.

future federal cabinet from swamping the Upper House with appointees amenable only to its point of view.

Popular election as a method of constituting the Upper Chamber had been advocated by Prince Edward Island, but the scheme was quickly dismissed.(1) Its critics argued that it would create two Houses of exactly the same character, each seeking to interpret the popular will, such that inter-House conflict would be inevitable. In addition, it was un-British.(2) Nor was appointment by provincial governments or election by provincial legislatures seriously proposed or debated except by Prince Edward Island.(3)

However it is interesting to note that the first Senators were appointed by the colonial legislatures, and where possible from the members of existing colonial Upper Chambers. It was understood that the colonial governments would seek to ensure that there was an equitable distribution of appointments between both major parties. This can be viewed as a small incentive to entice the colonial legislators into agreeing to join the union.

Given our modern preoccupations with the Senate the following argument that a chamber with a fixed number of members, appointed for life, would have an independence which the nominated Legislative Council of the united province of Canada had lacked is particularly interesting. "No Ministry," declared John A. Macdonald, "can in the future do what they have done in Canada before -- they cannot with the view of carrying any measure, or of strengthening the party, attempt to overrule the independent opinion of the Upper House by filling it with a number of its partisans and political supporters....The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country."(4)

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(1) Macdonald said: "We found a general disinclination on the part of the Lower Provinces to adopt the elective principle; indeed, I do not think there was a dissenting voice in the Conference against the adoption of the nominative principle, except from Prince Edward Island." Confederation Debates, p. 36.
(2) Confederation Debates, Mackenzie, p. 426; Macdonald, p. 35; Campbell, p. 23.
(3) A.A. Macdonald's Notes, pp. 36-37.
(4) Confederation Debates, p. 36.

It is probable that Macdonald and other leaders who favoured a strong union understood the basic contradiction between sectional representation and nomination by the central government, and saw in the appointment by the federal government a means of moving towards a more centralized system of government. The reasons why this could be so easily accepted can probably be best understood in the context of the American Civil War and the desire for strong central institutions, in addition to the belief that regional representation in the Cabinet, backed by representatives in the Commons, would control the appointments to the Upper Chamber. In the 1860's political parties were not nearly as well defined and disciplined as they are today. Government defeats were also more common, and strong, regional cabinet ministers could exercise considerable independent power.

When the Canadian delegates were asked to justify their creation, against the taunts that the rights of Lower Canadians were being bartered away, Cartier, the leader of the French-Canadian section of the government, argued that adequate safeguards existed. He reasoned that Lower Canada would continue to have a leader in the new Parliament who would be able to control all appointments for Lower Canada just as he had done. Sir Narcisse Belleau expressed a similar opinion:

> The influence of Lower Canada will enable her to make and unmake governments at pleasure when her interests are at stake or threatened. And if the importance of this responsibility of the Federal Government were well understood, there would be no anxiety about our institutions....The elective principle as applied to the Legislative Council becomes unnecessary in view of the numerical strength of Lower Canada in the Federal Parliament, for the House of Commons is the body that will make and unmake ministers....The safety of Lower Canada depends not on the elective principle, but on the responsibility of the members of the Executive to the Lower House.(1)

It is clear that the Fathers did not expect that the Senate to be the chief line of defence for the protection of provincial or local rights. The first great check on the central government would be the federal division of powers supported by the federal nature of the cabinet; the Upper House would be of more limited importance.

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(1) Confederation Debates, p. 185.

Ostensibly the first duty of the Upper Chamber was to protect the provinces, but it was intended to have other functions. It was expected to be a check upon the Lower House, and hence upon the encroachment of democracy. Cartier declared:

> The weak point in democratic institutions is the leaving of all power in the hands of the popular element. The history of the past proves this is an evil. In order that institutions may be stable and work harmoniously there must be a power of resistance to oppose the democratic element.(1)

Macdonald said:

> There would be no use of an Upper House if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill-considered legislation which may come from that body.(2)

In addition to being a check upon the Lower House it was generally agreed that the Senate ought to represent the interests of property. The pith of this argument was best expressed by Macdonald who noted that: "The rights of the minority must be protected, and the rich are always fewer in number than the poor."(3) The property qualification fit the prevailing political philosophy of colonial legislators. There appears to have been no objection to the property qualification for appointees to the Upper House of $4,000 in unencumbered real property in the province from which they were to be appointed. Indeed, some may have favoured a higher qualification. In 1864 this figure represented a substantial investment in the community.

No property requirements were introduced for members of the Lower House, as it was intended that the franchise and electoral procedures would be left, at least initially, to the provinces, all of which already provided property qualifications for electors and elected alike. Similarly the Fathers of Confederation

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(1) Confederation Debates, p. 571.
(2) Confederation Debates, p. 36.
(3) Pope's Documents, p. 58.

were not supporters of the doctrine of universal suffrage: "Not a single one of the representatives of the government or of the opposition of any one of the Lower Provinces was in favour of universal suffrage. Everyone felt that in this respect the principle of the British Constitution should be carried out and that classes and property should be represented as well as numbers."(1)

The underlying philosophy of the proposed federation was indeed highly conservative. Democracy and republicanism were foreign heresies imported from the United States. According to Georges Cartier:

> We, who had the benefit of being able to contemplate republicanism in action during a period of eighty years, saw its defects, and felt convinced that purely democratic institutions could not be conducive to the peace and prosperity of nations....The distinction therefore between ourselves and our neighbours was just this: — In our Federation the monarchial principle would form the leading feature, while on the other side of the line, judging by past history and present condition of the country, the ruling power was the will of the mob, the rule of the populace.(2)

D'Arcy McGee added the following observations:

> We run the risk of being swallowed up by the spirit of universal democracy that prevails in the United States....The proposed Confederation will enable us to bear up shoulder to shoulder to resist the spread of this universal democracy doctrine.(3)

The Upper House fitted this anti-democratic, anti-republican attitude both because its members would represent property, and because the system of appointment by the Crown would keep it as near as possible to that very British institution, the House of Lords. It would however avoid the main defect of the Lords, in that its members would not be a hereditary class.

The legislative powers of the Senate were established by Section 17 of the Constitution Act, 1867, which reads:

> There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

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(1) Pope's Documents, p. 120. John A. Macdonald is the speaker.
(2) Confederation Debates, p. 59.
(3) Confederation Debates, p. 143.

The ultimate centre of legal power under the new federation was to lie not in the people but in the sovereign legislature, thus the concept of parliamentary sovereignty. The Upper House of the new nation was to share fully in this provision; no legislation could become law without its concurrence. However there were certain ancillary provisions which provided for the primacy of the House of Commons as explained by R. MacGregor Dawson:

> The Senate, although endowed with comprehensive legal powers which were almost the equal to those of the Commons, was, of course, intended to be the minor legislative partner. This intention was placed beyond any possibility of doubt by three constitutional arrangements; two were stated in explicit form; the other, while no less clearly understood, rested on the established practice of the past. The British North America Act provided the explicit statements. Only the House of Commons was to be based on popular election; and while that alone gave the Commons the upper hand, the act added a further clause that the same body should also have the sole power to originate all bills for the raising or spending of money, a grant of power which clinched the matter. The third guarantee of the supremacy of the Commons was unwritten, but equally vital, namely, the constitutional understanding that the cabinet was to be held responsible to the lower and not to the upper House. Once these three fundamental propositions were enunciated, the general position of the two Houses were permanently settled, although there was still room for development and adjustment within the areas and functions thus allocated.(1)

It is clear that the functions intended for the Upper House were essentially negative. No one appears to have assumed that it should take any part in forming or leading the opinion of the country, or that it should have any influence upon public policy other than as a restraint upon unwise or hasty legislation. Macdonald spoke of it as the "House which has the sober second-thought in legislation"; although it would "never see itself in opposition against the deliberate and understood wishes of the people."(2)

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(1) R. MacGregor Dawson, The Government Of Canada, Fifth Edition, revised by Norman Ward, Toronto, University of Toronto Press, 1970, p. 280.
Note: No money bills may originate in the Senate; nor may the Senate revise government money bills upward; s. 53, Constitution Act, 1867.

(2) Confederation Debates, p. 35, 36.

II. REVISIONS IN REPRESENTATION

The solution to this question of representation in the Upper House was the great compromise of the Quebec Conference. It is possible to draw a comparison with the Philadelphia Conference where the Constitution of the United States was written seventy-seven years earlier. At Philadelphia the compromise was equal representation in the American Senate for the states; at Quebec City it was equal representation for the three regions. It was the key to federation, "the very essence of the compact," said George Brown. "Our Lower Canadian friends have agreed to give us representation by population in the Lower House, on the express condition that they could have equality in the Upper House. On no other condition could we have advanced a step."(1) It is significant that when Prince Edward Island refused to come into the federation in 1867, the 24 members allotted to the Maritimes were divided equally between New Brunswick and Nova Scotia, and thus the principle of equal regional representation was not broken. On the admission of new provinces and new territory in the West additional Senators were added from time to time.(2) By the Constitution Act, 1915, the West was recognized as a distinct division and was allotted a representation of 24 members equally with the other divisions, six Senators being assigned to each of the four Western provinces. As the West was counted as the fourth division, the "deadlock provision" was

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(1) Confederation Debates, p. 88.

(2) - The Manitoba Act, 1870 provided for two additional Senators.
- The British Columbia terms of union, 1871, provided for three additional Senators.
- Prince Edward Island was admitted to Canada in 1873, providing for four Senators from P.E.I., but reducing Nova Scotia and New Brunswick from 12 each to 10 each (Section 147 of the Constitution Act, 1867).
- Census results in 1882 provoked the addition of another Senator for Manitoba.
- In 1887 two seats were given to the Northwest Territories, then comprising the areas of Alberta and Saskatchewan.
- In 1892 census results provoked the additon of a fourth Senator for Manitoba.
- In 1903 the Northwest Territories representation was raised to four.
- Upon their creation in 1905, Alberta and Saskatchewan were given four seats each, and the Northwest Territorial seats were eliminated.

amended so that any increase in Senate membership would include equivalent representation from the West.

The 1915 Act also provided for six Senators from Newfoundland in addition to the 24 for the Maritime provinces; this was followed in the Terms of Union in 1949. It was not until 1975 that the Senate expanded again with one additional seat being given to each of the Northwest Territories and Yukon. The total number of Senators is now 104.

Sections 26 and 27 of the Constitution Act, 1867, contain the deadlock provisions (between Senate and Commons) which had been insisted upon by the British government. In 1873, Prime Minister Alexander Mackenzie, concerned that a hostile majority in the Senate had blocked some legislation, forwarded a request to the British government seeking permission to appoint additional Senators. Although there had been some obstruction this was not a persistent crisis. The Sovereign, on the advice of her British ministers, refused. It was explained that the monarch would not exercise the power referred to in the Act "...except upon an occasion when it had been made apparent that a difference had arisen between the two Houses of so serious and permanent a character that the government could not be carried on without her intervention, and when it could be shown that the limited creation of senators allowed by the Act would apply an adequate remedy."(1) In 1900 Sir Wilfred Laurier tentatively raised the question of appointing additional Senators as did Sir Robert Borden in 1912, but in each case no formal action was taken.(2) It would appear that British intervention in this deadlock mechanism is now anachronistic in view of Canada's independent status since the Statute of Westminster, 1931.

Under the original Section 29 of the Constitution Act, 1867, Senators were to be appointed for life. In 1965 this was amended by Parliament to the effect that all Senators appointed after that date would be required to retire when they attain the age of seventy-five years.

Section 24 of the Constitution Act, 1867, used the word "persons" to describe Senators. This was the source of one of the most celebrated judicial

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(1) This reply was delivered by the Earl of Kimberley; see: J.G. Bourinot, Parliamentary Procedure And Practice, Second Edition, Toronto, 1891, p. 141.

(2) J.R. Mallory, The Structure Of Canadian Government, Toronto, Macmillan of Canada, 1971, p. 227.

decisions on the Canadian Constitution. The franchise had been extended to women for Canadian national elections in 1918; Agnes Macphail was the first woman to be elected to the House of Commons in 1921. Following this advance many women's organizations urged the government to appoint Judge Emily Murphy of Edmonton to the Senate. The obstacle was that in 1867 women were not acknowledged in British law to be "persons" capable of holding public office. A legalistic interpretation of the word "persons" in s. 24 could be advanced to the effect that it referred only to males. This was the position taken by the Department of Justice and was supported through a unanimous reference to the Supreme Court of Canada. On appeal the Judicial Committee of the British Privy Council reversed the Supreme Court's ruling, holding that the term "persons" in s. 24 might include either sex.(1)

Five Alberta women: Mrs. Henrietta Muir Edwards, Judge Murphy; the Hon. Irene Parlby, an Alberta provincial cabinet minister; Mrs. Nellie McClung; and Mrs. Louise McKinney initiated the appeal to the Privy Council. A plaque in the Senate Chamber commemorates the struggle of these five women. Prime Minister Mackenzie King appointed the first woman to the Senate, Mrs. Cairine Wilson, in February 1930.

The question of Senate representation is often debated in terms of calling Senators to serve in the Cabinet. In the early years of Confederation the Senate was seen as a secondary but significant alternative source of cabinet material. This trend did not last long as it was in conflict with the democratic principle that a minister be answerable to the elected Members of the House of Commons. However, during the Clark Cabinet of 1979 and the Trudeau Cabinet of 1980 - 1984, the incoming Prime Ministers conferred important ministerial portfolios on Senators from Quebec and Western Canada respectively. This practice of giving Cabinet representation to provinces that had elected few members to the government side of the House of Commons is a noteworthy development. This is, in a sense, a reversion to an earlier tradition. Of John A. Macdonald's first Cabinet, four

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(1) Lord Sankey observed: "The exclusion of women from all public offices is a relic of days more barbarous than ours, but it must be remembered that the necessity of the times often forced on man customs which in later years were not necessary. Such exclusion is probably due to the fact that the deliberative assemblies of the early tribes were attended by men under arms, and women did not bear arms." Edwards v. A.-G. Can. [1930], A.C. 124 at 128.

members entered the Senate when it was first constituted, and a fifth was appointed a Senator in 1868. There were only two Senators in Laurier's Cabinet of 1896. In recent times, till 1979, the only Senator to hold important departmental responsibilities was Wallace McCutcheon, Minister of Trade and Commerce for a few months prior to the defeat of the Diefenbaker government in 1963. In 1969 legislation was enacted to establish a position of Leader of the Government in the Senate, and incumbents of this position have been members of the Cabinet.

III. DEVELOPMENT OF THE SENATE'S LEGISLATIVE ROLE

The legislative role of the Senate can be divided into several aspects: private legislation, Private Members' bills, the initiation of government legislation, the revising and potential veto of government legislation. Also Senate committees have become quite involved in the investigation of policy areas.

The Senate does most of the parliamentary work involved in private bills. These bills apply to individuals, corporate "persons," or charitable organizations. Private bills are normally introduced into the Senate, where they are expertly examined, revised if necessary, and then presented to the House for perfunctory passage, leaving the overworked House of Commons with more time for government legislation. Although private bills do not normally raise serious questions of public policy, they all require careful scrutiny in order to protect the rights of third parties who may be affected by them.

Private bills have become, in recent years, a much less significant part of the Canadian legislative process. Their role has been usurped through the passage of comprehensive legislation which has delegated administrative procedures and quasi-judicial authority to various boards, agencies and departments of government. The delegation of greater administrative discretion to the Department of Consumer and Corporate Affairs and to the Superintendent of Insurance has especially reduced the need for private legislation. Since 1968 private divorce

petitions have not proceeded through the Senate; these matters had required a considerable investment in the Senate's time-table. Some matters of importance still remain, particularly the chartering of banks and the incorporation of telephone and telegraph companies.

Senators, like Members of the House of Commons, may introduce their own Private Member's bills. A Senator can bring any non-money bill, which he considers to be important, to the attention of his peers. Although this may generate some discussion the chance of the bill receiving full passage is extremely remote. Nevertheless, it will provide an opportunity to air the issue and may subsequently pave the way for eventual government action.

The Senate's influence on government legislation is quite limited. The legal prohibition on the introduction of money bills and the tendency of ministers to introduce their own measures in the Commons have deprived the Senate of any major part in the initiation of government bills. In 1947, the Senate amended its rules in order to be able to invite a minister, who is not a Senator, to appear on the floor of the chamber in order to answer questions in support of government legislation or his department's responsibilities.(1) Ministers have still been hesitant to appear in the foreign atmosphere of the Senate and, as a consequence, the effectiveness of the rule is limited.

The amount and kind of legislation introduced in the Senate depends largely on the confidence which the government-of-the-day has in the chamber and the kinds of legislation which it is pursuing. Controversial measures and matters with a high political profile are almost always introduced into the Commons. Bills which are not particularly controversial but which are complex and could benefit from the detailed scrutiny of a Senate committee may be introduced into the upper chamber.

The Senate is master of its own rules; the formal route of passage through three readings is virtually identical in each chamber. A bill introduced in

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(1) Rules Of The Senate Of Canada, 1980, s. 18, p. 6. "When a bill or other matter relating to any subject administered by a department of the Government of Canada is being considered by the Senate or in Committee of the Whole, a minister, not being a member of the Senate, may on invitation from the Senate enter the Senate Chamber and, subject to the rules, orders, usages, forms and proceedings of the Senate, may take part in the debate."

the Senate, which is amended and revised on the basis of Senate committee work may be allowed to proceed to the next stage, introduction into the House, or it may be withdrawn or simply allowed to die at the end of the session. Such bills may be reintroduced into the Senate but they are as likely to be introduced into the House often with the Senate's amendments quite intact to proceed anew.

The Senate has been very successful in revising poorly drafted bills which have been sent from the Commons; in some cases sloppy drafting would misconstrue the government's intentions; in other instances it might make certain aspects of the bill unworkable. According to Professor J.R. Mallory:

> In complex and highly technical bills there are likely to be a number of unsuspected flaws, even when those bills have been drafted by skilled government draftsmen. Some of these flaws may only appear after the House of Commons and the public have had some time to digest them. Furthermore, the acceptance by the government of an amendment in the Commons may require unforeseen consequential changes. These changes can be inserted when the bill is going through the Senate without unduly delaying the progress of the bill. There is no way that this would be done without greater delay in a single-chambered legislature. Nor should it be forgotten that the Senate contains a number of former ministers and M.P.s with long experience of public life and expert knowledge of many highly technical branches of law and administration. Their contribution to the consideration of legislation is not a negligible one, and is one that is well worth retaining.(1)

For some years now it has been the rule that all government measures must be approved by the Department of Justice; all public bills are now subjected to a formal procedure which seeks to minimize the problems associated with hasty drafting. This point has been emphasized by Professor Dawson:

> The need for the Senate as a ground crew for a high-flying Commons has therefore been profoundly modified and senators, while they have more leisure and fewer distractions than their colleagues in the Commons, also have fewer opportunities than they formerly had to display the fruits of their wisdom in the repairing of legislation.(2)

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(1) J.R. Mallory, The Structure Of Canadian Government, Macmillan of Canada, Toronto, 1971, p. 234.

(2) The Government Of Canada, p. 293.

Nevertheless, the need for technical amendments has not been eliminated. Formal amendment is only the most visible part of this process. The Senate often prefers a more subtle approach. Instead of using its amendment powers directly, it often approaches the government with suggestions for revision which may then be submitted as government amendments.

The most severe restraint on the Senate's ability to give adequate consideration to House bills has been the press of government business on the legislative calendar of the Commons. This has resulted in the very late arrival of legislation to the Upper House in the dying days of the session. It is not an infrequent occurrence for the Senate to be notified of the imminent visit of the Governor General's deputy for the giving of Royal Assent to sundry bills, and then to receive some of the actual bills, "to which the Senate is clearly expected to give all three readings within an hour or two, or else keep the Governor General's deputy waiting."(1) Although possible it would be very unusual for the Senate to make the Commons wait while the tardy bills receive careful and deliberate deliberation. As a consequence the Senate is subject to two contraditory criticisms: it is either accused of passing complex legislation, without due consideration, or of taking too long and "obstructing" the will of the people as expressed by the Commons.

This situation has been mitigated somewhat by a precedent set in September 1971 when permission was sought and granted to study a white paper on tax reform and any related bills in advance of the bills coming before the Senate. The procedure is referred to as the "Hayden formula" after a previous chairman of Senate Standing Committee of Banking, Trade and Commerce. The procedure works as follows: when a piece of legislation comes to the House of Commons, a Senate standing committee obtains a copy of the draft and begins work on it. This can include the calling of witnesses and a lengthy section-by-section review of the draft. The committee may then propose changes, usually in consultation with the civil servants and ultimately the cabinet minister concerned. The views of the Senate can therefore be heard earlier in the legislative process and the government may accommodate them or not as it sees fit. When the legislation officially arrives in the Senate, it would be noted that the matter had already been given thorough

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(1) Norman Ward, The Public Purse, Toronto, University of Toronto Press, p. 9.

committee study in pre-review. This procedure has been followed on a number of occasions and it has enabled the Senate to have an impact on some very significant legislative proposals: the Bank Act revisions of 1977, the Unemployment Insurance provisions of 1978, and more recently the bill to establish a Canadian internal security agency.

As in the United Kingdom, the House of Commons has always claimed the exclusive right to grant supply, and further claims that the Senate has no right to amend supply bills in any way.(1) These claims have always been firmly rejected by the Senate, which argues that since the Constitution Act omits any mention of such restriction on its powers none could have been intended, and that if the Senate, as representing the provincial interests, cannot amend such bills, it cannot discharge its constitutional functions.(2) Although the Senate has been very cautious in regard to financial legislation it has revised bills containing financial clauses, and has even amended taxation legislation. From time to time the House has accepted these amendments, while adding the futile caveat that the incident is not to be considered a precedent. Governments have even found it prudent on occasion to introduce money bills into the Senate. Supposedly the financial clauses are omitted, but in reality they are simply printed in italics or some other unusual form, to indicate omission.(3)

In the early decades of Confederation the use of the Senate veto on legislation from the Lower House was quite common. The practice gradually declined so that in the decade between 1930 and 1940 only thirteen of the government and private bills initiated in the Commons were rejected by the Senate. The last full

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(1) Standing Orders Of The House Of Commons, June 1978, No. 63. "All aids and supplies granted to Her Majesty by the Parliament of Canada are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills, the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate." This goes back to the earliest rules of the House in 1867, and goes back to a resolution passed by the English House of Commons in 1678; it is reproduced exactly as S.O. 67 in Permanent And Provisional Standing Orders Of The House Of Commons, December 22, 1982.

(2) Canada, Senate Journals, 1918, pp. 193-203.

(3) F.A. Kunz, The Modern Senate Of Canada, 1925 - 1963: A Re-appraisal, Toronto, University of Toronto Press, 1965, pp. 203-4.

veto being exercised in 1940 on a bill designed to give soldiers oil and mineral rights on properties they had settled; the Senate preferred the existing law which retained these rights in the Crown.(1) From 1940 through 1961 not a single bill was rejected. In the latter year the Senate clashed with the Commons on two occasions, the first was over the dismissal of the Governor of the Bank of Canada; the second concerned a bill to amend the Customs Act which provided for ministerial discretion without appeal on the importation of items that were or could be made in Canada. The Senate insisted on giving the Governor of the Bank a parliamentary forum in which to answer his detractors and insisted that an appeal be permitted on these custom matters from the Minister to the Tariff Board.(2) In each case the voting was strictly along party lines and partisan considerations often overshadowed the merits of the Senate's objections. In both instances the issues at stake reflected important historic concerns of the Senate, namely, to protect individual rights and to guard against ministerial encroachments. Between 1961 and 1985 the Senate has been quite restrained in its dealings with the House. Although it has continued to submit amendments which the Senators have thought both prudent and desirable it has generally backed away from any direct confrontation with the House.

This reticence can be illustrated by the events surrounding the Senate amendment in 1973 to a Protection of Privacy bill. This involved a provision which would require that the subject of a wiretap be informed of the surveillance within 90 days of its removal. The provision was narrowly passed by the Opposition parties in a period of minority government. Although the Minister of Justice had opposed the "notification procedure," he acceded to the will of the House and the bill was sent to the Senate. The Senate, taking particular interest in the opposition to this measure by the chiefs of police, voted to strike the "notification" clause and the bill, minus the clause, was returned to the House. The Opposition forces in the Commons again united to pass a resolution returning the bill to the Senate asking that it be reconsidered. The ensuing debate in the Senate focused not only on the merits of their amendment but on the desirability of a confrontation with the other

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(1) Soldiers' Settlement Act Amendment, 1940. See, MacKay, The Unreformed Senate Of Canada, Revised Edition, pp. 106-107.

(2) The details of the 1961 clashes between the Commons and the Senate are described by MacKay, The Unreformed Senate Of Canada, Revised Edition, pp. 108-109.

house and also on the role of the upper chamber. The debate did not fall along party lines. Conservative Senators were particulary outspoken against their party in the Commons. The Senate ultimately backed down and resolved by a vote not to insist on its amendment. Senator Eugene Forsey, in speaking against the Senate amendment, described the Senate's legislative perrogatives as follows:

> First of all I think there can be no question at all that this house has a right to amend any legislation from the other house that it sees fit to amend....And it has a right and even a duty to insist on the amendments, if there is in the judgment of the members of this house, due reason to do so.

But Senator Forsey insisted that there was a need to look beyond the narrow constitutional issue,

> I think the practice has grown up that in general the Senate will reject a bill from the other house, or insist on an amendment of a bill from the other house, only in rather unusual circumstances — circumstances of great seriousness.

He described two scenerios where the Senate should insist on its right to an amendment: "if the bill, or a clause in the bill, is really vicious; if it is, for example, a gross and flagrant invasion of the liberties of the subject, or a measure fatal or highly dangerous to the national existence" and "if there is a tremendous, widespread, furious outcry from a large section of the country against the measure." In his opinion, neither requirement was satisfied by the particular amendment then before the Senate.(1)

The above example demonstrates that unless the circumstances are of great seriousness, if the Commons insists on its way the Senate will almost always give in. The Senators are very aware that they lack a popular mandate and normally proceed with extreme caution against the expressed wishes of the Lower House. This is not to say that their formal powers have been legally restricted or that the Senate could not act if it so desired. However, by custom the Senate will consider not only the merits or propriety of a government measure but also the government's popular

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(1) Debates Of The Senate, 11 January 1974, pp. 1481-84. This incident is reviewed in the Ph.D. thesis by Janet Marie McCauley, "The Senate Of Canada: Maintenance Of A Second Chamber Through Functional Adaptability", The Pennsylvania State University, May 1983.

mandate to act. As early as 1927, following the rejection of an Old Age Pension bill a year earlier, the Senate accepted the bill after the government had won an election in which its intentions on this issue were discussed during the campaign.

The investigative function of the Senate certainly appears to be a development on what the Fathers of Confederation had intended by "sober second thought." Although special Senate inquiries can be traced back to the 1920's they have achieved special prominence during the 1960's and 1970's through the production of "special committee" reports on matters of significant public interest. These have ranged from the ten-year investigation of science policy in Canada, to shorter but still comprehensive studies, of a year or two duration, on matters such as the mass media or poverty. Other major studies have concentrated on land use policy, on employment and immigration, on aging, on retirement age policies and on pipelines. Although these studies have not received unreserved praise from everyone they have been generally well received and they can be seen to have had an impact on government legislation and programs. According to Professor Albinski:

> In recent years, Senate select committees have produced a number of elucidative reports, on the basis of which governments have then proceeded to draft legislation. A report on land use resulted in fresh legislative approaches to forest utilization and the regional handling of agricultural problems. Another report, on manpower and employment, resulted in new approaches to industrial organization and assistance, and technical and vocational assistance programs.(1)

The Senate has developed skilled personnel for this kind of investigatory work which is done rather less expensively than royal commissions or government appointed task forces.

This investigative function is carried on not only through the use of special committees but also through the special studies undertaken by standing committees as well as through investigations of legislation under consideration by the Senate. In addition special joint committees of the Senate and the House of Commons have been created to investigate questions of public policy. It is worth

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(1) Henry Albinski, Canadian And Australian Politics In Comparative Perspective, Oxford University Press, 1973, p. 337. For a more comprehensive review, see Barbara Plant Reynolds, "Special Senate Committees" (background paper for Parliamentarians), Library of Parliament, Ottawa, March, 1980.

noting the special work of the Standing Committee on National Finance. This Committee selects one government department for a searching and careful examination and analysis. This is far more thorough than the Estimates procedures in the House. Its non-partisan approach is less threatening to departments which usually ensures excellent cooperation and provides a receptive atmosphere for the Committee's recommendations. Also noteworthy are the special studies issued by the Standing Senate Committee on Foreign Affairs on the Caribbean, the Pacific, the European Community and Canada-United States relations. The Standing Senate Committee on Legal and Constitutional Affairs has issued reports on statutory instruments, parole in Canada, a Green Paper on conflict of interest, a cannabis study and studies on public referenda, off-track betting and fugitive offenders. Other standing committees have produced similarly useful studies on issues of current interest. There have also been special joint committees with the House of Commons which are usually concern major issues such as immigration policy, the use of subordinate legislation and the Constitution.

IV. CONSTITUTIONAL AMENDMENT

The Senate has played an important role in the process of constitutional amendment. The Constitution Act, 1867, required that a constitutional resolution pass both Houses before proceeding to the Westminster Parliament for enactment. In 1936 the Senate refused to concur on a proposed amendment which would have set up loan councils to consolidate the borrowing powers of the provinces, and would at the same time have clarified their taxing powers. In 1960, the Senate amended a proposed resolution to amend the the constitution regarding the retiring age of judges. The Commons had earlier passed a resolution seeking an amendment making it compulsory for all superior, county and district court judges to retire at the age of 75. In the course of debate in the Commons, misgiving had been expressed at the inclusion of district and county court judges on the ground that Parliament

could deal with them under ordinary legislation outside the Constitution Act. The government refused to yield on this point, but the Senate deleted the reference to district and county court judges from the resolution. The government acquiesced and the amended joint resolution was forwarded to Westminster.

A Constitutional Amendment Bill introduced by Prime Minister Trudeau on June 20, 1978, proposed important changes in the area of federal institutions, particularly the Senate. The Upper Chamber would be replaced by a House of the Federation, made up of 118 members, 59 of whom would be appointed by the House of Commons, 57 by the provincial legislatures and 2 by the federal Cabinet to represent the Yukon and Northwest Territories. This new institution would only have a suspensive veto under which it could block legislation for periods ranging from 60 days to six months, depending on the way in which the legislation was handled in the House of the Federation and on the subsequent action by the House of Commons. Majorities of both French-speaking and English-speaking members would be required for the House of the Federation to approve measures of "special linguistic significance" although a failure to approve such a measure could still be overridden by the House of Commons.

After much objection by the opposition and the public in the parliamentary committee which had been set up to examine the bill, the cabinet referred two questions to the Supreme Court: (1) Is it within the legislative authority of Parliament to repeal or amend sections of the British North America Act so as to delete any reference to the Senate? (2) Can Parliament enact legislation changing the powers of the Upper House and the proportion from each province and method of selection of its members?(1)

The answer to both these questions was rendered on December 21, 1979. The court's unanimous response was "no". The proposed actions were judged unconstitutional because they would "alter the structure of the federal Parliament to which the federal power is entrusted under Section 91 of the British North America Act."(2) By the time the Supreme Court announced its verdict the original Bill C-60 had been withdrawn; the Trudeau government which had introduced it had been

(1) Re: Authority of Parliament in Relation to the Upper House (1980), 1. S.C.R. 54. The case is commonly referred to as the Senate Reference case.
(2) Ibid.

defeated and the Clark government which had replaced the Liberal regime had just lost the confidence of the House of Commons.

With the return of a new Trudeau administration which had worked vigorously to defeat a Quebec referendum on sovereignty-association, the stage was set for a new constitutional initiative. After much negotiation at the official level a Federal-Provincial Conference of First Ministers was held in September 1980. As substantive progress had not been made towards constitutional reform the federal government decided to act unilaterally. The Prime Minister announced that the government would seek a joint address to Her Majesty to "patriate" the British North America Act and amend it to include an amending formula and a Charter of Rights. Under the proposed amending formula the Senate would lose its absolute veto on constitutional amendments to be replaced with a 90 day suspensive veto.

The proposed joint resolution was sent to a Special Joint Committee of the Senate and the House of Commons for study. Although the proposed revisions of the Senate's power respecting constitutional amendment was not one of the most vigorously debated issues, it was important. The Progressive Conservative Party argued that the Senate's powers should be left alone and many Liberal Senators were also making their displeasure known. Eventually the government decided to drop the proposal. It was aware that the joint resolution would have a more difficult time in passing the Senate if the reform was included. Also the British Committee studying the resolution felt that the Senate Reference case had substantially weakened the Canadian government's right to proceed unilaterally on matters affecting the powers of the Senate.

Following the very strenuous objections which were being raised in the House of Commons and the substantially negative verdict on its actions by the Supreme Court of Canada, the Canadian government agreed to convene one last Federal-Provincial Conference of First Ministers in November, 1981. A compromise was reached by the federal government and all the provinces with the exception of Quebec. This new accord accepted the "patriation" of the Canadian Constitution, with an amended version of the Charter of Rights together with a substantially different amending formula that had been previously developed by the provinces which had been opposed to the unilateral initiative. Under this amending formula, which is sometimes called the Alberta formula, the Senate's veto power with respect to constitutional amendments is limited to a 180 day suspensive veto.(1)

V CONCLUSION

In conclusion, it is clear that the compromise on representation was the political key to union. Representation according to population in the Lower House gave assurance that the will of the people as a whole would prevail in federal affairs. Equality of representation in the Upper House for each of the three great geographical divisions, later to be augmented by a fourth, was, on the other hand, a clear recognition of particular regional and provincial interests, and a promise of protection of these interests in the federal Parliament. But it was not anticipated that the Senate would be a first line of defence for these interests; it would be in effect a reserve line after the House of Commons and the Cabinet. It was, however, important that the sentiments of particularism should not endanger the unity of the new nation; hence the provision for appointment by the central authority rather than by the local authority and rather than by popular election.

But the Senate was to have other functions as well. It was to represent conservatism and property. It was to protect the people against themselves and to be a break on too precipitate action by the Lower House. It was to fulfill its responsibilities through the revision and delay of legislation, not by making or unmaking governments. It was assumed that its wide legal powers would in practice be blunted by the political fact, that while the House of Commons would represent the nation, the Senate would have no such direct political mandate. It was to be in every sense a secondary chamber, able to exercise a moderating influence, but not to play a dominant or obstructive role in government.

The Senate has changed remarkably little in the 116 years of its existence. It has grown to encompass four divisions in recognition of the development of the West. Senators are no longer appointed for life and women are now commonly appointed although they are very much in the minority. The deadlock provisions of sections 26 and 27 are probably moribund, but if not they are no longer subject to the dictates of the British government. Finally, the Senate has lost its absolute veto on constitutional matters.

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(1) Constitution Act, 1982, Schedule B, s. 47.

No characteristic of the Canadian Senate has tended to bring it more into disrespect than the notoriously partisan nature of senatorial appointments. After prolonged tenure of power by one party, such as the eighteen years of Conservative rule after 1878, the fifteen years of Liberal domination after 1896, the twenty-two uninterrupted years of Liberal power beginning in 1936, or the twenty years of Liberal dominance after 1963, serious numerical imbalances develop between government members and the opposition in the Senate. Since senatorships are considered to be the personal gift of the Prime Minister and are used to reward faithful party service, despite occasional token "non-partisan" appointments, there is little prospect, short of complete institutional reform of any substantial change in such imbalances in the composition of the Senate.

Also attitudes towards mass democracy have changed so substantially that an appointed Senate can never achieve the degree of political legitimacy envisioned by the Fathers of Confederation. Its unrepresentative character puts it at a most severe disadvantage in any confrontation with the elected House. Individual Senators at times do institute enquiries or debates of particular interest to themselves or to their region or province. However, because the Senate itself has such little public esteem, that whatever their intrinsic merit, the public efforts of individual Senators are likely to go unnoticed. This has had a very negative impact both on the Senate's role as a revising Chamber as well as its role as the federal parliamentary institution for the protection and advancement of regional or provincial rights.

Whatever the intentions of its creators, the Senate has never given effective expression to the attitudes and interests that are specifically regional or provincial. In the protection of provincial rights and the presentation of provincial points of view it is more likely to be the opposition parties in the House of Commons which will be active precisely because opposition parties get into office by exploiting grievances. This paper has not attempted to evaluate the role of the Senate as a champion of regional or provincial rights; however, most commentators have agreed with R.A. McKay's assessment that: "The Senate...has rarely been appealed to as the champion of provincial or sectional rights and, even when appealed to, it has not consistently supported claims to such rights."(1)

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(1) The Unreformed Senate Of Canada, Revised Edition, p. 113.

CHRONOLOGY OF SELECTED EVENTS:

THE HISTORY OF UPPER CHAMBERS IN BRITISH NORTH AMERICA AND CANADA

1791	As a response to the American Revolution the British government enacted the Constitution Act to provide a stable form of government for the colonies of British North America. It assumed the creation of the two new colonies of Upper and Lower Canada and provided institutions for each. It established the first Legislative Council, a new creation which resembled the House of Lords, entirely distinct from the Executive Council (advisor to the Governor), which was intended to act as a check upon the Legislative Assembly and to share the law-making power with it.
1837	Rebellions in Upper and Lower Canada.
1838	Lord Durham delivered his report to the British government. He advocated the granting of responsible government to the colonies of British North America and the union of Upper and Lower Canada.
1840	The Act of Union refrained from instituting responsible government but did unite the provinces of Lower and Upper Canada under one government consisting of a Legislative Assembly and a Legislative Council. The members of the Legislative Council were appointed by the Governor General for life. Similar institutions of government existed in the Maritime colonies.
January 1848	Responsible government was first instituted in British North America when the government of Nova Scotia resigned when it lost a vote of confidence. This was followed by a similar event in March 1848 in the province of Canada.
June 1864	A coalition government was formed in the united province of Canada between Conservatives and some Reformers pledged to end the governmental impasse in Canada through fundamental constitutional change.
Sept. 1- 16, 1864	Charlottetown Conference was held to discuss Maritime union. With the addition of delegates from Canada the discussions were broadened to include a wider federation. It was agreed that any union would require a strong national government but with guarantees for provincial rights and interests.

Oct. 10 -26, 1884 — The Quebec Conference included delegates from Newfoundland, Prince Edward Island, Nova Scotia, New Brunswick, Upper and Lower Canada. It produced the Quebec Resolutions which were to form the basis of the new constitution for Canada including an appointed Upper House styled the Senate.

1884 - 1886 — In the Canadian legislature, where the coalition government was in secure control, the Quebec Resolutions were accepted without change.
Prince Edward Island and Newfoundland rejected the Quebec Resolutions outright.
Amid much political manoeuvering the legislatures of Nova Scotia and New Brunswick never accepted the Quebec Resolutions; but they did appoint delegates to discuss this plan of union in cooperation with Great Britain and Canada in the Westminster Palace Hotel in London.

Dec. 10 - 25 1886 — At the Westminster or London Conference delegates from Nova Scotia, New Brunswick, the Canadas and Great Britain produced the London Resolutions which were transformed into the British North America Act, to be renamed the Constitution Act, 1867.

July 1, 1867 — The Constitution Act, 1867, created a 72-member Senate consisting of three divisions (Ontario, Quebec, and the Maritime Provinces) each having 24 members.

1870 — The Manitoba Act, 1870 provided for two additional Senators.

1871 — The Imperial Order In Council admitting British Columbia to the union provided for three additional Senators.

1873 — The Imperial Order In Council admitting Prince Edward Island to the union with Canada, provided for four Senators for the island province, and thereby reduced the representation of Nova Scotia and New Brunswich from 12 each to 10 each (Section 147 of the Constitution Act, 1867).

1873 — Prime Minister Alexander Mackenzie was rebuffed by the British government when he requested permission to add to the number of Senators in the Upper Chamber. He was informed that the so-called "deadlock provision" would only operate if there was persistent obstruction and such was not the case.

1882 — Census results provoked the addition of another Senator for Manitoba.

1887 Two seats were given to the Northwest Territories.

1892 Census results provoked the addition of a fourth Senator for Manitoba.

1903 Northwest Territories representation raised from two to four.

1905 The Alberta Act, 1905, and the Saskatchewan Act, 1905, which created both Alberta and Saskatchewan provided four seats each to the new provinces; however the Northwest Territorial seats were eliminated. The total number of Senate seats was then 87.

1915 The Constitution Act, 1915 amended the constitution to provide for a fourth senatorial division of 24 members, consisting of the four western provinces which would then have 6 Senators each. The Senate would now consist of 96 members. This fourth division would also stand as a distinct entity in any deadlock between the Commons and the Senate; any increase in Senate membership would require an equal increase in each division.

1929 The Judicial Committee of the British Privy Council overturned a decision by the Supreme Court of Canada to declare that women were "persons" under the constitution and could thereby be appointed to the Canadian Senate.

1930 First woman Senator, Mrs. Cairine Wilson, was appointed by Prime Minister Mackenzie King.

1947 The Senate amended its Rules, its official procedures, to permit a Minister, who is not a Senator, to appear on the floor of the Senate in support of government legislation.

1949 Newfoundland admitted to Canada by The Constitution Act (No. 1), 1949, and by the Terms of Union of Newfoundland with Canada Act, 1949, would receive 6 seats in the Senate.

1965 The Constitution Act, 1965, as passed by Parliament, would require all Senators appointed after that date to retire at age 75.

1969 The position of Leader of the Government in the Senate was enacted; incumbents in this position have been members of the cabinet and thereby serve at the pleasure of the Prime Minister.

1970 Provision for exercising the functions of Speaker during his absence is made by the Speaker of the Senate Act, 1970. Doubts as to the power of Parliament to enact such an Act were removed by the Canadian Speaker (Appointment of Deputy) Act, 1895 (U.K.) which was repealed by the Constitution Act, 1982.

1971	The Senate received permission to study a government white paper on tax reform and thereby initiated a pre-study procedure that would permit it to examine legislation which had been introduced in the House but not yet passed. Although such legislation could not be amended until officially introduced into the Senate the Senators could offer recommendations and make their intentions known.
1975	The Constitution Act, (No. 2), 1975, provided one seat each to the Northwest Territory and Yukon for a current total membership of the Senate of 104.
June 1978	The federal government introduced Bill C-60 which proposed substantial reform of the Senate. As a result of sustained criticism from the public, the provinces and the parliamentary opposition, the government submitted a reference to the Supreme Court asking whether Parliament, by itself, had the authority to amend the powers and membership selection procedures of the Senate.
December 1979	The Supreme Court in an unanimous decision declared that the proposed actions would be ultra vires (beyond) the power of the national Parliament.
September 1980	The federal government proposed a Joint (Senate - House of Commons) Resolution to amend the constitution of Canada: to "patriate" it from Britain, to add a Charter of Rights and an Amending formula. One aspect of this amending formula would limit the Senate's veto on constitutional matters.
November 1981	A constitutional accord was signed by the federal government and the provinces, with the exception of Quebec, which accepted the "patriation" of the constitution, a revised Charter of Rights, and a provincially inspired amending formula which would also limit the Senate's veto on constitutional matters to a suspensive veto of 180 days.
April 17, 1982	The Constitution Act, 1982, received the Royal Assent.

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DOCUMENT B.

SECOND CHAMBERS IN OTHER COUNTRIES

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SECOND CHAMBERS IN OTHER COUNTRIES:

a) INTRODUCTION

It may be argued with some cogency that, because the Canadian federal system is unique and the problems associated with it are not only special but exceptionally complex, the experience of other countries will be of little relevance to Canadian concerns. A simplistic importation of political structures and practices from another country without due consideration for their historic, social, cultural and political environment and the corresponding circumstances in this country would lead to disastrous consequences. Because political institutions are very powerful and at the same time very sensitive instruments, they can produce a wide variety of both intended and unintended consequences which will have far reaching effects within a country's political system as well as on the broader society. Therefore any change to a country's constitutional and political institutions must be carefully tailored to the requirements of that individual nation state. An answer to the current malaise surrounding the patronage laden Canadian Senate must bear a made-in-Canada label. This does not mean that there is nothing to learn from the experiences of other countries; only that the ultimate solution must be designed to fit current Canadian conditions with sufficient flexibility to be able to adapt to changing circumstances. It is from this cautious but open-minded perspective that the Select Special Committee on Upper House Reform has approached its examination of comparative political systems.

This examination of comparative political systems which is presented below is only a sample of the international studies undertaken by the members of this Committee. What is offered is a selection of the most relevant examples of country studies that have helped guide the Committee's deliberations. Space and time does not permit a fuller presentation of all possible examples. This presentation offers a fairly detailed and deliberately objective selection of facts about the second chambers in the Commonwealth of Australia, the United States of America,

the Federal Republic of Germany, the United Kingdom of Great Britain and Northern Ireland and the Republic of France.

Each description establishes the context of that country's political and constitutional system. For the federal states this includes an evaluation of the "federal" nature of the country, outlining the respective roles and powers of the provincial (state or laender) governments and the national governments. For each example there is a general discussion of the national parliamentary system with particular emphasis on the role of the executive and lower house and their systemic relations with the upper chamber. The examination of each upper chamber describes the composition of that chamber, the electoral system or appointment process, its powers vis à vis the government and lower house, its internal operating procedures, and the specific mechanisms for resolving differences with the lower house. The Select Special Committee has been particularly concerned with how well these institutions reflect the social, economic and political diversities found in their societies particularly where these differences have importance for distinctive local areas. For those federal societies, the question of concern to this Committee is how well are provincial, state or laender interests reflected in the national parliaments of their respective countries? Because the Select Special Committee has been concerned with the broad context of the operation of Canadian federalism and has reviewed the role played by First Ministers Conferences in Canada, similar intergovernmental mechanisms are reviewed in these federal states. The Select Special Committee emphasizes that it does not wish to make judgements about the quality or effectiveness of any other governmental system. The following analyses are presented to illustrate the depth and breadth of this Committee's investigations and to place our recommendations in a broader international context.

The Select Special Committee has deliberately selected three federal and two unitary states for the following presentation. The Commonwealth of Australia is the country that is perhaps most similar to Canada in terms of its British colonial heritage, its nonrevolutionary style of constitutional development, and its vast territory, which is sparsely populated except for widely separated urban concentrations. The Australian states exhibit economic diversities which are similar to the unequal development experienced by Canadian provinces. It provides an excellent example of an elected Senate, with equal representation for each state, within the context of the British-style parliamentary model.

Living as we do within the North American continent Canadians are perhaps most familiar with the Senate of the United States. This is undoubtedly a most influential second chamber. It adheres to the classical federal principle of equal representation for each State and has combined this with the traditional first-past-the-post electoral system. Although the United States also experienced British colonial administration, its revolutionary break with Britain occurred a century prior to the evolutionary developments in Canada and Australia. Thus the American congressional and federal systems developed under very different circumstances and not unexpectedly produced an institutional context at variance with some of the general traditions of the Canadian political system. The Select Special Committee certainly does not advocate that Canadian parliamentary institutions and traditions be replaced an American republic or congressional system. It is our opinion that Australia has provided ample evidence that certain structural aspects of an equal, elected and effective second chamber, as represented by the American Senate, can be effectively integrated within a British-style parliamentary system.

The Federal Republic of Germany presents a radically different approach to federalism. The institutional and political structures of the Federal Republic seek to diffuse or deconcentrate power and to decentralize administration in a manner which is unfamiliar to the Canadian, American and Australian models. It clearly demonstrates that British parliamentary and American federal traditions are not the only way to secure an effective division of constitutional responsibilities; cooperative procedures within other institutional contexts can also produce effective results. The Bundesrat, the German second chamber, resembles a board of state governments, whose members possess quasi-diplomatic responsibility on behalf of their individual state governments. The German Bundesrat is a most interesting chamber, of particular interest to the Select Special Committee is its internal operating procedures which emphasize the interaction of provincial interests. However, the Committee has concluded that, because of the substantially different traditions on which it is based, the direct importation of a Bundesrat-style Senate, representing provincial executives, would not be congruent with Canadian political and federal traditions or Canadian parliamentary institutions. The Committee shares the view expressed in the 1984 Report of the Special Joint Committee of the Senate and House of Commons that such a reform would "make the federal Parliament a hybird amounting to a monstrosity."

The presentation of the British House of Lords provides a brief review of the evolution of that historic institution. It should remind Canadians that although we now possess a written Canadian Constitution many of our current parliamentary practices and customs are based on what may be described as the "living tree" of our unwritten British-based constitutional traditions and usages. The evolutionary nature of British constitutional and parliamentary development, particularly the restraining role of the second chamber, has been clearly traced. It is also worth noting that as early as 1911 the British government proscribed substantial restrictions on the powers of the Lords so that it is now little more than a debating chamber.

The Senate of the Republic of France has also been examined, even though France is neither a British-style parliamentary system nor a federal state. The French Senate provides an interesting example of an indirectly-elected upper house which attempts to provide for a different style of local representation in the national parliament. Many interested Albertans who have approached this Committee have proposed the indirect election of Canadian Senators, usually suggesting that this be done by either the Members of the Canadian Parliament, the Members of Provincial Legislative Assemblies, or both. The French Senate provides an example of indirect election. However, after thorough consideration the Members of the Select Special Committee have concluded that while indirect election is functionally possible it would not significantly enhance the legitimacy and political authority of the Canadian Senate.

The Special Select Committee wishes to underline the general nature of the following papers. They are presented to enable interested readers of this report to place our recommendations for change within a broad context, noting our primary concern that these recommendations meet the exacting requirements of Canadian tradition and practice. In particular any reform must strengthen our parliamentary and federal institutions to be better able to reflect the needs and concerns of Canadian citizens.

b) COMMONWEALTH OF AUSTRALIA

CONTENTS

COMMONWEALTH OF AUSTRALIA

I. Type Of Government

Constitutional monarchy, parliamentary democracy, federation.

II. General Background

Australia is a modern industrial state of some 14.7 million inhabitants.

On January 1, 1901, by an Act of the British Parliament, the six self-governing British colonies -- New South Wales, Victoria, Queensland, South Australia, Western Australia and Tasmania -- joined in a federation which was called the Commonwealth of Australia. The national capital, Canberra, as the Federal Capital Territory, is outside the jurisdiction of any one state. As well there is the very expansive Northern Territory which, although more populous, is in an analogous position to the Canadian Territories. Indeed in geographic terms Australia is much like Canada consisting of large unpopulated areas with narrow concentrations of development. The Commonwealth of Australia Constitution Act, 1901 with amendments, became the Constitution of this new self-governing nation. It specifies the division of powers between the Commonwealth government and the governments of the States.

As the Australian federation has evolved the relative power of the Commonwealth government has increased. This has been achieved in part through constitutional amendment; this is a difficult process that requires a referendum to be supported by a majority of voters nationwide and a majority of voters in at least four of the six States. Of greater significance has been the decisions of the High Court, which exercises judicial review over constitutional matters. The High Court has permitted the Commonwealth to use the primacy of its concurrent legislation to

monopolize the collection of income taxes which in turn has made the States dependent on the 'reimbursement' of these funds through a revenue-sharing arrangement. In addition the High Court has given wide latitude to the Commonwealth's constitutional authority to "grant financial assistance to any State on such terms and conditions as Parliament sees fit," which in turn has enabled the Commonwealth to set terms and conditions on spending in policy areas that had been 'reserved' for the the States. There is thus a vertical fiscal imbalance in favour of the Commonwealth that characterizes Commonwelath - State relations. However, the overall federal balance is dynamic not static. As in other federal systems the appropriate balance between Federal and State power is both a political and constitutional question which provides a source of continuing controversies.

As in Canada the federal system coexists with parliamentary institutions originally developed under the British parliamentary model designed for a unitary state. The Westminster model was followed by the individual colonies during the nineteenth century and persists at both the Commonwealth and State level today. However, the introduction of federalism utilized North American as well as British concepts of government.

III. Units Of Government

The national Parliament consists of the Monarch, represented by the Governor General, and two chambers: the House of Representatives and the Senate. The Australian head of state is the Monarch. Except when the Monarch is actually visiting Australia, the role is carried out by the Governor General. It is a firm convention of the modern parliamentary system that this head of state acts only on the advice of his or her ministers and, in particular, of the Prime Minister.

A. Executive

The Prime Minister is, by convention, the leader of the majority party or coalition in the House of Representatives. Other ministers are drawn from either House of Parliament, mostly from the House of Representatives. Coalition governments (usually of parties in opposition to the Australian Labor Party) have been a common feature of Australian politics. Technically, under the constitution, executive power is wielded by the Executive Council, consisting of the Governor General and his ministers. In practice the cabinet functions as the central organ of government. It is chaired by the Prime Minister, and by definition it is supported by a majority of the House of Representatives.

B. Popular Chamber

The House of Representatives is structured like the British House of Commons. Under the constitution each of the six States must have at least five members. The Australian Capital Territory is represented by two members and the Northern Territory by one. There are presently 148 members of the House of Representatives who are each elected for a maximum term of three years. An earlier election may be held if the government loses its parliamentary majority or if the Prime Minister decides that there is some advantage in going to the polls early.

Australia has been a pioneer in devising electoral reforms: some, such as the secret ballot, have been widely accepted, while other procedures such as compulsory enrolment and permanent lists of electors, compulsory voting, postal voting, preferential voting and proportional representation have found less acceptance outside Australia. The Commonwealth Electoral Act and Representation Act under went a substantial revision in 1983 to include for the first time an independent electoral commission, public funding of federal electoral campaigns, public disclosure of income and expenditure by political parties and candidates, simplified voting procedures, as well as an increase in the size of Parliament. Also, redistributions are no longer subject to parliamentary veto.

The system of election for the House of Representatives is by preferential ballot in single-member constituencies. Under preferential voting,

voters must rank all candidates on the ballot in numerical order. If no candidate wins an absolute majority of first-preferences votes, then the lowest-scoring candidate is eliminated and his votes redistributed according to the second preference of his supporters. This process of elimination and redistribution continues until one candidate wins by acquiring an absolute majority of votes. The complicated nature of the voting process has resulted in the practice whereby Australian political parties issue "how-to-vote" cards to their supporters in order to direct their sequential preferences.

IV. Upper Chamber: The Australian Senate

The Australian colonies had been self-governing since the 1860's; they had a well developed tradition of bicameral legislatures, which included powerful second chambers, before their entry into the federation. This tradition has carried over into the constitutions of the modern States. These second chambers traditionally protected the interests of the Australian elites against the possibility of rampant populism by the democratically elected lower house. The founding fathers were cognizant of these traditions and also wanted to create a States' House modelled closely on the United States Senate. This was considered to be the price, which had to be paid, to attract the smaller colonies into the federation. For the smaller States the Senate was seen as a protection against the larger States as much as a protection for all the States against the Commonwealth; hence the provision for equal representation. It was a unique institution in the sense that it was an elected upper chamber quite unlike any similar House in the British Empire. It was more powerful in some respects than any other upper house at the time including the U.S. Senate.

A. Method Of Representation

As of the 1984 election the Australian Senate is made up of twelve members from each State, elected at large for six-year terms. They retire by rotation, half on 30 June each third year. Senate elections are customarily arranged to coincide with House of Representatives elections, but this is not always possible when the House is dissolved early. There were attempts in 1974 and 1977 through a constitutional amendment to fix the Senatorial term to two House terms, but the necessary referendum was defeated on both occasions. Since 1975, the two Territories have each had two Senators who, unlike their colleagues, must seek reelection at the same time as every House of Representatives election which is normally every three years; also there is no rotation of Territory Senators as in the case of State Senators. This makes for a total of 76 Senators, 72 representing the States and 4 from the Territories. The Constitution empowers Parliament to increase its size but lays down certain conditions; the most important is the rule that the number of members of the House of Representative must always be "as nearly as practicable" twice the number of Senators.

In Senate elections each State is a single, multi-member constituency; each normal electoral contest is for half the State's representation or six seats. After a double dissolution of both Houses of Parliament, all twelve Senate seats for each State are contested. As in contests for the House of Representatives, Senate electoral contests use a preferential ballot. However, the Senate contests also use a variation on the system of proportional representation, called the single transferable vote. Candidates are declared elected if they receive a quota of votes currently calculated to be one-seventh during a standard election (one-thirteenth in a double dissolution) plus one. It is therefore possible for a party with 43 percent of the votes cast to win three of the six State seats. As this is a common vote for the major parties, it has been argued that this electoral arrangement will work against the interests of minor parties. As in contests for the House of Representatives, Senate electoral contests use a preferential ballot. Candidates who receive more than a quota have their 'surplus' votes distributed according to the indicated preferences. In this way, and with the elimination of the lowest-scoring candidates, if necessary, the requisite number of winning candidates is determined. This system

aims at the maximizing of support behind each candidate. First preferences count to the end, even when there are many more than needed to elect a given candidate. Because candidates are grouped on the ballot paper in party columns and because most voters follow the party how-to-vote instructions in numbering preferences, the effect is somewhat similar to proportional representation. Under the 1983 reforms, new ballots were designed which permit the elector to cast one vote, which then has the effect of distributing all of his or her preferences according to an arrangement predetermined by the party. The electors, however, still have the option to distribute their votes according to their individual preferences.

The issuing of writs for a Senate election is in the hands of the State Governors (whereas House of Representatives election writs are issued by the Governor General). It is customary for the Governor General to advise the State Governors of the date for elections to the House of Representatives and suggest that they adopt the same date for the Senate election. Technically any State could refuse or could fix a different date for the Senate poll. The Constitution allows the business of the Senate to continue if any State should refuse or delay election of its Senators.

Casual vacancies, caused by the death or resignation of an elected member during a term, are filled, in the case of the vacancy in the representation of a State by a joint sitting of the particular State Houses of Parliament (except Queensland, which is unicameral and therefore the single House chooses a successor). In the case of a casual vacancy in the representation of the Northern Territory, a vacancy is filled by choice of the Legislative Assembly for the Northern Territory; and in the case of the Australian Capital Territory, by choice at a joint sitting of the Senate and the House of Representatives. In all cases, the Constitution requires that the person chosen must be a member of the same political party as the vacating Senator was at the time of his or her election. The Senator so chosen serves out the unexpired term of the Senator he or she replaces.

B. Power

The legislative powers of Parliament are set out in Part V of the Constitution, section 51; other powers are exercised by the State legislatures. In practice the Senate generally acts as a 'House of review' on legislation originating in the House of Representatives. However, with the exception of money bills, the legislative powers of the Australian Senate are equal in respect of all proposed laws to that of the House of Representatives.(1) It may amend all non-financial legislation which comes before it. For a bill to become law, it must be passed in identical language by both Houses. Each House possesses a veto power over all bills. The Senate can, at any stage, return to the House of Representatives any bill, including those which it cannot amend. In recent years, when the balance of power in the upper chamber has been held by minor parties, the Senate has been very thorough and effective in its scrutiny of legislation. Indeed, Senators have become a significant focus for the lobbying efforts of interest groups.

Problems arise in the relationship between the Houses with respect to interpretation of what constitutes an appropriation or a money bill. Governments and the House of Representatives have sought to give a narrow interpretation, generally taking the view that an ordinary service is virtually any service which the government is competent to provide pursuant to its powers and authority. The Senate, for its part, has contended that appropriations for such items as the construction of public works and buildings, grants to the States, and new policies not authorized by special legislation are not appropriations for the ordinary annual services of the government and therefore may be amended by the Senate.

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(1) The Senate's powers in regard to money bills are subject to the following restrictions as set out in section 53 of the Constitution. It cannot:

(a) originate a taxing Bill or an appropriation Bill
(b) amend a taxing Bill or a Bill appropriating revenue or moneys for the ordinary annual services of government; or
(c) amend any Bill so as to increase any proposed charge or burden on the people.

Also under section 53 the Senate can, at any stage, return to the House of Representatives any of the Bills which it cannot amend, with a request, proposed by any Senator for the omission or amendment of any item or provision and it has the full power of veto.

This matter came to a head in 1964-65 when the then government introduced an omnibus apppropriation bill in which items which had not formerly been classified as being for the ordinary annual services such as works and buildings were included. The Senate resisted and after lengthy negotations, agreement was reached, since referred to as the Compact of 1965. Pursuant to that compact, a separate bill, subject to Senate amendment, is always introduced containing appropriations for expenditure on public works and buildings, plant and equipment of a capital nature, grants to the States, and new policies. The Senate had also expressed concerns that the appropriations for the five Parliamentary departments had been included in the general government appropriation bill. In 1982 this concern was resolved when the government introduced a separate bill, Appropriation (Parliamentary Departments), for separate passage by both Houses.

A longstanding contest has raged between the Houses over the Senate's claim to press requests for amendments to money bills. Although the Senate may not itself make amendments, it may at any stage make requests for amendments. The Senate has always contended that, if a requested amendment is not made by the House of Representatives, it may press the request, and has so provided in Senate standing orders. The House of Representatives has from time to time passed a resolution refraining from a determination of its constitutional rights or obligations before taking the Senate's message, pressing requests, into consideration. The Senate has always responded with a motion affirming that the action of the House of Representatives in receiving and dealing with the reiterated requests of the Senate was in compliance with the undoubted constitutional position and rights of the Senate. In 1981 the House of Representative adopted a new tactic of declining to consider the Senate's pressed requests for amendments to the Sales Tax Amendment Bills, 1981. The Speaker of the House delivered a lengthy statement, to the effect that he considered that it was unconstitutional to press a request. The House then passed a motion endorsing the Speaker's statement. The bills in question were not further proceeded with, instead new bills were introduced. What the future holds with respect to pressed requests by the Senate remains to be seen; however, the Senate has not backed away from its stated position.

"Tacking", that is, the inclusion in a money bill of extraneous matter to secure its passage through the Upper House unamended is another matter

which from time to time has soured relations between the two Houses. The Senate is ever vigilant in its examination of bills received from the House of Representatives to guard against tacking in order to protect its amendment power.

For most of its life the Australian Senate has not been held in high public esteem. It has been referred to as an old men's club and an anachronism; for over fifty years the Australian Labor Party has advocated its abolition. However, the Senate enjoys the strictest form of constitutional protection. For a referendum to abolish the Senate to succeed, it would need to be passed in every State. The principal reason for this discontent, critics claim, is the observation that the Senate has failed in its role as a States' House or an effective House of review because of its domination by political parties.

With the development of modern political parties, obedience to the party hierarchy assumed greater importance than local or State loyalties for those Senators who wished to retain their seats and perhaps gain promotion to the ministry. Virtually all Senate votes are decided on party lines. The electoral system which gives parties control over the listing of candidates, the political rewards available from the Prime Minister's office (especially the promise of an eventual cabinet post), and the constitution of the House in terms of government and opposition, all conspire to enhance the effect of party discipline. As a result, when the governing party or parties in the House of Representatives possessed a majority in the Senate, the tendency has been for the Senate to "rubber stamp" most measures from the lower chamber. On those occasions when the government has faced a major opposition party holding a majority in the Senate, actions contrary to the wishes of the government have been considered as obstruction.

However since the 1960s, the system of proportional representation has begun to produce a new and fairly consistent style of representation in the Senate, in which few governments, of whatever party, could be certain that they would have a majority in that chamber. The balance of power in the House since that time has been held by representatives of minor parties and independents. This has resulted in a situation where government measures will be reviewed very seriously and accommodations may have to be made with the so-called independents to secure passage. Indeed passage is by no means guaranteed. There has also been some weakening of party discipline within the major political parties. Nevertheless,

the Senate remains a party house, to go against party lines, even on relatively minor matters, is not something that is easily accomplished.

Although Australia has not suffered from the severity of regional imbalances that have plagued party representation in the Canadian House of Commons, Senate representatives from States with low representation in the House of Representatives have played an important role in representing State interests within their party. As in Canada much legislation in the Commonwealth Parliament, by its nature, affects particular geographical areas more than others; for example, a debate on the apple and pear industry is virtually a debate about Tasmania, a debate about the automotive industry is often a debate about the future of South Australia. Senate representation assists the parties to more effectively debate these questions of regional concern.

V. Resolution Of Conflict Between Upper And Lower Chambers

A. Messages, Negotiations And Conferences

The standing orders of each House provide ample opportunity for messages to go back and forth without hindrance or limitation, proposing amendments to bills, amendment to amendments, new amendments, and the like. In this way most matters in dispute are finally resolved.

If disagreement cannot be resolved by an exchange of messages, each House may, by resolution, agree to a conference and appoint not less than five managers to confer on the disputed matter and report their proceeding to each House. The conference procedure has been seldom used; however on the three occasions in which it has been used, it has been successful.

B. Double Dissolution

If agreement cannot be reached on a disputed matter in proposed legislation, the bill may be laid aside or another identical bill may be presented. However, if a deadlock persists and the Senate has twice failed to pass a bill, then within certain time limitations there can be a double dissolution (if the government is prepared to fight an election on the issue). This means that the entire membership of both Houses must face simultaneous reelection. If there is still a deadlock after the elections, the Governor General may convene a joint sitting of both Houses (in which Senators are out-numbered two-to-one) to consider the disputed bill(s). If the proposed law is affirmed by an absolute majority it shall be taken to have been duly passed by both Houses of Parliament, and shall be presented for Royal assent.

Since federation in 1901, there have been five double dissolutions — in 1914, 1951, 1974, 1975 and 1983. The 1914 and 1951 double dissolutions followed the rejection by the Senate of a single bill and the result of the ensuing elections in each case was such that a joint sitting was not necessary to resolve the matter in dispute.

However, in 1974 and 1975 the circumstances were very different. On both those occasions the Senate, where the government was in a minority, deferred the passage of the government's appropriation legislation (known as supply), without which a government cannot operate. These action could have resulted in single dissolutions of the House of Representatives, if the government had so recommended to the Governor General. But this was not the case.

In both 1974 and 1975 there were, at the time of the withholding of supply, a number of bills twice rejected by the Senate upon which to base a double dissolution pursuant to the constitution. In 1974 the Prime Minister (Mr. Whitlam of the Australian Party) opted for a double dissolution in respect of six bills and his decision had the concurrence of the Senate, which then passed the necessary supply. The Prime Minister was returned to power with a reduced majority in the House of Representatives and a two-seat minority in the Senate. In the resulting joint sitting the six bills were passed by a majority of those assembled.

Over the next fourteen months the new Senate continued to reject government bills and again deferred supply. The government, however, refused to resign, consistent with the Westminster convention that a government which retains

the confidence of the House of Representatives stays in office. A constitutional crisis of the first magnitude then developed. The Governor General, contrary to the tradition that he act only on the advice of his ministers but consonant with a literal reading of the Constitution, dismissed the Prime Minister and his government. The Leader of the Oppositon (Mr. Malcolm Fraser) was commissioned to form a new government, obtain supply and advise a double dissolution on the basis of 21 twice-rejected bills, all of which duly happened. The new Prime Minister won the subsequent election with a substantial majority in both Houses.

In February, 1983, Prime Minister Fraser announced that he would seek a double dissolution of both Houses of Parliament based on the rejection on two occasions by the Senate of 13 bills relating to sales tax, tertiary fees, and unemployment benefit payments to the spouses of strikers. However, it has been argued that this double dissolution was based more on the exigencies of electoral strategy than on a serious deadlock between the two Houses, as was so evident in supply crisis of 1975. If this were the case, then it was a serious miscalculation as the Australian Labour Party, under its new leader Mr. Bob Hawke, won a substantial victory in the House of Representatives. Although the Australian Labour Party increased its strength in the Senate, the balance of power remained with the minor parties. This balance was maintained with a slight diminution of Labour Party strength in the most recent elections of December 1, 1984.

It is to be noted that a double dissolution does not necessarily follow when a bill is deemed to have twice failed to pass the Senate. If the government does not choose to advise the Governor General to dissolve Parliament, nothing happens. Then the nice question arises as to whether the bill in question, and possibly other disputed bills, may be put on ice, as it were, and used as grounds for a double dissolution at a later time. Disputed bills were stockpiled in 1974 and 1975 and were grounds for dissolving Parliament when the Senate withheld supply. In 1983 the disputed bills were held in abeyance until the government decided to press for a new mandate. But the occasion has not so far happened when the Governor General has been asked to dissolve Parliament on the basis of a stockpiled bill or bills, which may be stale and unrelated to a current situtation. At present the only constitutional limitation is the provision that a dissolution of Parliament shall not take place within six months before the date of expiry of the House of Representatives by the effuxion of time.

VI. Other Aspects Of Intergovernmental Relations

Australian State governments have little formal participation in the decision making structures at the Commonwealth level, but they undoubtedly exercise some influence on the Commonwealth government through informal mechanisms. The Senate has already been examined in the context of its role in Australian federalism; the other prominent areas of intergovernmental relations — the Loan Council, the Premier's Conference and other ministerial and administrative contacts will be briefly discussesd below.

A. The Australian Loan Council

The Australian Loan Council was formally established in 1927, although a voluntary Loan Council had operated before that. The need for such an institution arose out of a desire on the part of Commonwealth and State governments to coordinate their borrowing. It was brought into being by the enactment of the necessary legislation by all seven governments and a subsequent constitutional amendment to prevent the unilateral withdrawal by any of the member governments.

The Council coordinates, approves and guarantees the public borrowings of Commonwealth, State (including semi-government authorities) and local governments. It is not now within the power of a State government or legislature to determine the magnitude of its capital expenditure program. Membership of the Loan Council formally comprises the Prime Minister and the Premiers of the States or ministers named as substitutes. The Commonwealth or any three states can request a meeting. The main meeting is held near the end of the financial year in May or June just prior to the Premiers' Conference. Each State government submits an annual program setting out its requirements and those of its semi-government and local authorities. The Commonwealth may also submit a program. The size of the total loan program is subject to a majority vote. In this respect, and in all other matters requiring a majority vote, the Commonwealth has two votes and a casting vote. However, the allocation of the loan program between

governments requires a unanimous vote; if that is not possible a formula is applied relating to past distributions but this has never been required. The Loan Council meets in camera; its decisions are legally binding on all governments. Subject to the decisions of the Loan Coucil, the Commonwealth normally arranges for all borrowings; although, subject to the unanimous consent of the Council, a State may borrow outside Australia under a guarantee by the Commonwealth.

The Loan Council is one federal institution in which the States have been accorded a formal role. This role has not been particularly influential. Under the voting structure where the Commonwealth has two votes and a casting vote, it has always been possible for the Commonwealth to win the day with the support of only two States. However the Commonwealth is usually not driven to such extremes. It possesses the key economic resources; it is solely responsible for monetary and fiscal policy as well as possessing the legal authority over exchange controls, imports, exports and trading banks. In addition, the Commonwealth has the taxation resources which enable it to retain buoyant revenues through taxation while making loans to the States to assist them with their needs. As lender to the States the Commonwealth is in a powerful position in the Loan Council to determine the size and distribution of public loans.

B. The Premiers' Conference

The Premiers' Conference began as an informal gathering of the Premiers of the former colonies to discuss matters of mutual interst and to resolve any interstate difficulties which arose. For most of the Conferences after 1901 the Commonwealth was invited to attend. The modern era of Premiers' Conferences was initiated after the introduction of the uniform income tax arrangements in 1942. At the conferences a variety of subjects of interest to both levels of government are discussed. They are normally dominated by deliberations over the level and distribution of Commonwealth grants to the States.

The Conferences are usually held in Canberra, the main conference being close to the end of the financial year in May or June. It is basically an informal gathering, although an agenda is prepared by the Commonwealth after consultations with the States. The Commonwealth also provides the secretariat for the conferences. Proceeding are conducted in secret although a transcript of the

conference proceedings or a press statement recording decisions is usually published. There are no formal voting procedures and no formal restrictions on attendance.

Because of the lack of a voting mechanism there is no formal way for the States to force the Commonwealth government to do their bidding, especially as the matters of primary interest are financial. The Commonwealth has the ultimate power under the constituion to make grants under its own terms and conditions. Also, these meetings are held directly after the Loan Council meetings where the Commonwealth does possess a direct veto.

The States react by attempting to turn the meeting into a political forum to generate public sympathy for their positions or their plight. There are occasions in which this has been a successful political tool. National and State news coverage is a vital aspect of this political role. Both federal and State politicians have a vested interest in promoting their own cause without necessarily having due consideration for the others.

C. Intergovernmental Ministerial and Administrative Contact

Most of the contact between the State governments and the Commonwealth government takes place through a vast array of intergovernmental bodies which have been established for almost every function of the State governments. Thus there are annual meetings (and often more frequent meetings) between State ministers in particular portfolios and their Commonwealth counterparts. The fact that there are Commonwealth representatives arises primarily because of the pronounced vertical fiscal imbalance which has been noted; the Commonwealth government now makes grants to the States in areas which are not its preserve under the constitutional division of powers as well as in areas of concurrent powers.

Some of these meeting are formal, in the sense that they have an agenda and are part of an actual agreement of some kind. None of them has a voting mechanism and in virtually all cases the decisions reached are not necessarily binding on the governments represented. The proceedings are not open to the public and transcripts are not produced. Some of them are extremely informal and meet only when required.

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c) UNITED STATES OF AMERICA

CONTENTS

UNITED STATES OF AMERICA

I. Type Of Government

Republic, executive President, legislative congress, federation.

II. General Background

The United States of America is a wealthy industrial nation of over 220 million people.

The American Constitution was formed from the experiences of 150 years of British colonial administration and by the revolutionary struggle for independence. The Articles of Confederation, the first basic law of the new nation, created a league of states with a Congress that was too weak to resolve their conflicting intersts. To deal with this vaccum of authority representatives from the States met in Convention in Philadelphia in 1787 to draft a new Constitution. The framers of the Constitution feared that a concentration of power in any one government institution, even one that was popularly elected could lead to rule by an oppressive majority. Thus they settled on the guiding principle of government by the consent of the governed. The rights of the people were to be protected by diffusing power among rival institutions. The delegates were leaders in their home States and the resulting accord would have to be submitted to those States for approval. The result was a series of compromises to which the individual States could agree. There was an accord that there should be a balance between the central government and the power of State governments. States' rights would be protected even within the national government for, although the lower house of the union would be directly elected by the people, the upper house was to be indirectly elected through the State legislatures. The powers of the central government were specifically enumerated with the residual powers being left to the States. Also, the first ten amendments to

the Constitution, now known as the Bill of Rights, sought to limit the role of government further by establishing fundamental freedoms, beyond the authority of any government, to be protected by an independent Supreme Court. Not only was there to be a separation of power between the national and state levels of government but within those governments among the legislative, executive and judicial branches each with its own independent base of power. Thus the famous theory of checks and balances. This also applies at the State level where, with the exception of Nebraska, all the States have bicameral legislatures and State governors are elected independently of their legislatures.

The evolution of American federalism has been to greatly expand the role of the national government. For a period of American history the theory of federalism consisting of separate, coordinate and independent spheres of power mirrored reality. Before the Civil War the national government performed only the broadest of functions, all truly national in scope while the States administered most matters of a local nature. An 1819 Supreme Court decision asserting the principle of national supremacy began a reversal of this trend which was clearly ended by the 1860's with the victory of the Union over the successionist States in the Civil War.

The beginning of the period of the supremacy of the national government is seen to coincide with the ratification in 1913 of the Sixteenth Amendment to the Constitution which gave Congress the power to impose an income tax. This financial windfall enabled the national government to begin 'sharing' revenue with State and local governments. The federal government has since been able to use its taxation base to fund grant-in-aid programs through which it can secure the compliance of State and local governments in certain specified programs in accordance with prescribed standards and requirements. In addition, the Supreme Court's interpretation of the Constitution's interstate commerce clause in 1937 supported the national government's effort to regulate a vast range of labour-management relations and eventually permitted federal regulation of a wide range of economic activities. Indeed the Congress was able to use this power to deal with certain problems of racial discrimination.

Since the 1930's, the national government has dealt with cities and other local governments by means of loans, grants, contracts, and to some degree direct regulation. Local governments have usually required some form of blanket

authorization from their States to use federal grants and loans and to enter into contracts with federal agencies (because local units are delegated their powers by the State). In some instances, State authorization has been refused, but generally consent has been readily given. However, State participation in the federal-municipal relationship is usually quite limited. The three federal agenices primarily involved with local governments are the Department of Health, Education and Welfare, the Department of Housing and Urban Development and the Department of Transportation.

The 1960's and 70's saw an expansion of this process of federal intervention in the affairs of State and local government authorities, so that, now, the national government is deeply involved in the prevention of water and air pollution, in medical services, in primary and secondary education, in highway safety, and even in the training of State officials and local law-enforcement personnel. The national government is also able to direct its regulatory authority to States and localities, quite independently of grants or loans. The result is that many if not most major policy decisions of State and local governments have been constrained or guided by federal regulation and actions, even in areas which the Constitution had clearly reserved to the States or the people. The present Reagan administration appears intent on instituting a new federalism, which would rely more on individual and local initiative, less regulation and block grants with fewer spending guidelines.

Although most constitutional change has come via judicial interpretation or through the extension of national financial and regulatory power, many changes have been sought through direct constitutional amendment. An amendment to the Constitution can be proposed by a two-thirds vote in both chambers of the Congress, and is ratified upon simple majority approval by the legislatures of three-quarters of the States. In theory, constitutional amendments could be proposed by a national constitutional convention, called on the request of two-thirds of the State legislatures, and ratified by constitutional conventions in three-quarters of the States. This is a very complex and difficult procedure which has resulted in very few changes.

III. Units Of Government

The head of government and head of state is the President of the United States. A Vice-President is also selected. The legislature is organized into two chambers. In one, the House of Representatives, equal representation was given to the people. In the other, the Senate, equal representation was given to the States. The American congressional system differs from the parliamentary model in several respects. The branches of government are separate and distinct with independent sources of popular support and constitutional power. The survival of the government does not depend upon its ability to muster a majority in the legislature. Congressmen therefore have a substantial independent influence on legislation; party discipline is much less important. Congress has independent powers, defined by the Constitution, that it can and does exercise without regard to presidential preferences. The Supreme Court is the final arbiter of constitutional matters.

A. The Executive

The President is the chief executive in both civil and military administration and is responsible for the conduct of foreign affairs. However, no one branch of government has exclusive authority over any area of public policy. Congress is required to vote funds and enabling legislation and the Senate must confirm the President's appointments and ratify international treaties. The President has the power to veto congressional legislation; however that veto may be overridden by a two-thirds vote in both the House and the Senate.

The President has the right to nominate the chiefs of the major agencies and departments of government and their immediate subordinates. Although the Senate has the right to confirm or reject these nominees, it rarely rejects presidential appointments. The heads of the major departments of state are called secretaries and are known collectively as the cabinet. Its size is fixed by law and currently stands at thirteen. In addition to this formal cabinet, other members

of the government may be given cabinet rank, such as the head of the Office of Management and Budget (OMB), and the head of the National Security Council; the President may ask anyone he chooses to attend cabinet meetings. The cabinet has no power as such and certainly cannot override the President. Cabinet members are advisers rather than colleagues. Similarly the Vice-President is a colleague with no substantial constitutional powers (except to act as presiding officer of the Senate) and only those administrative powers as directed by the President.

In recent years the White House and the President's immediate staff and agencies closely controlled by him have grown in importance. Of particular importance is the OMB which has the right to examine the budgets of all agencies or departments and to recommend that they be cut or increased and the right to examine all legislation in order to determine whether it is in accordance with the program of the President. Most of the significant legislative proposals originate in the executive branch.

The Founding Fathers did not trust the election of the President to the popular will, nor did they wish to leave it in the hands of Congress. A compromise was adopted whereby each State "shall appoint, in such manner as the legislature thereof may direct," electors equal in number to the Representatives and Senators that each State has in Congress. The details of how participants in the Electoral College were to be selected were left up to the States; at first many State legislatures picked the electors themselves. Electors are now chosen by popular vote once every four years, early in November. However, when the States instituted the direct election of electors they also imposed the winner-take-all-rule, under which the candidate with a plurality of popular votes gets all of that State's electoral votes. The national vote total is therefore meaningless and Presidents have been elected who have run behind their opponents in the popular vote. Each State sends the results to Washington, where the electoral votes are officially counted in a joint session of Congress. If no one receives a majority, the House of Representatives must choose the President from among the three candidates with the largest number of electoral votes, with each State delegation in the House having one vote. If there is no majority vote for Vice-President, the Senate makes that choice.

B. Popular Chamber

The House of Representatives consists of 435 Members elected every second year, from single member districts by simple plurality vote. Each State is entitled to at least one Representative; according to law, there shall be no more than one Representative per 500,000 people. The Supreme Court decided in 1964 that congressional districts within each State are to be subdivided equal in population. In addition, the House has a resident commissioner from Puerto Rico, who is elected for a four-year term, and four delegates, one each from the District of Columbia, Guam, American Samoa, and the Virgin Islands. The reapportionment of electoral ridings and the qualifications for voting is left to State legislatures, while the allocation of districts among States is entrusted to Congress and is based on the decennial census. The terms of all members expire simultaneously so that the House must organize anew every two years. National elections for the Presidency, and Congress as well as for many governorships and state legislatures occur on the same date in early November, during even numbered years.

The House has three unique functions: all money bills must originate in the House; it has the constitutional power to elect the President if no candidate receives a majority of electoral votes; and it may impeach the President and other federal officials. In the early years of the Republic, the House was the dominant branch of Congress; indeed it was the dominant government institution. This has changed with the passage of years, as both the Presidency and the Senate have assumed more and more power.

In comparison with other national office holders, Representatives or Congressmen serve relatively small constituencies and because of their short term of office they are perpetually preparing and campaigning for reelection. In this way, they are seen as being in the most frequent and direct contact with the people. This is one of the reasons why more incumbent Representatives are reelected than incumbent Senators. By almost invariable custom the Representative lives in the district from which he or she is elected. The insistence upon local residence underscores the belief of many observers that Representatives serve their own district and the special interests of that district rather than the country as a whole.

IV. Upper Chamber: The Senate of the United States

The Senate is composed of 100 members, two from each State. As a result of this equality, Alaska, which in 1982 had a population of 438,000 persons, has as large a voice in the Senate as California, with its population of 24,724,000. The 25 smallest States in the Union, although they contain less than 20 percent of the nation's total population hold 50 percent of the seats in the Senate. This numerical imbalance between the number of seats and the population of a State has never become a significant political problem. The notion of equal representation of the States is a well entrenched principle of the American political system.

The Vice-President is the presiding officer of the Senate, his only constitutional job. However, Vice-Presidents tend to leave these duties to the party leaders in the Senate; he rarely attends its meetings, except on those occasions when his vote is needed to break a tie. In his absence a Senator, known as the President pro tempore, elected from the membership presides. The agenda of the Senate is normally set by the Senate Majority Leader, in consultation with his party's leadership, as well as with the Minority Leader and the leading Senators from that party. Essentially the Senate is made up of 100 individuals who, in theory, are each as powerful as the other in terms of their authority and responsibilities. There is no firm correlation between a Senator's national legislative prominence and the size of State represented. Their political influence is based on more personal considerations. Some of the most influential have come from the smallest States.

Because they are relatively few in number, and serve for a six year renewable term, Senators command a great deal of attention by the national media. As a result of the prestige and national importance of the Senate it is not uncommon for Members of the House or State Governors to seek election to that body. The reverse is not true. Also the Senate has been a successful training ground for politicians with presidential aspirations.

A. Method Of Representation

The 'great compromise' of the Constitutional Convention of 1787 was the solution to the problem of representation in Congress. The delegates simply split the basis of representation between the two Houses - population for the House of Representatives, and equal representation by State for the Senate. In the view of some Founding Fathers, Senators were to be ambassadors from the States, representing the sovereign interests of the States to the federal government. State legislatures were to elect these 'ambassadors' instead of the people themselves, as these assemblies would be better able to choose the kind of delegate needed to represent the States' interests to the federal government. The ambassadorial aspect of a Senator's duty was deeply entrenched in some of the States. Their legislatures would, on occasion, take it upon themselves to instruct their Senators on how to vote. The Founders were also concerned with the length of the senatorial term. They tried to balance two principles: that frequent elections were necessary to promote good behaviour; and the need for continuity in government. The result was six year staggered terms, with one-third of the Senators coming up for election every two years.

Popular election to the Senate was finally achieved with the ratification of the Seventeenth Amendment to the Constitution in 1913. The entire State represents the electoral district with the method of election being by simple plurality vote. The Seventeenth amendment also made provision for filling a vacancy in a senatorial term. The State Governor was provided with the authority to call a special election to fill the unexpired term. However, with the permission of the State legislature, the Governor could make a temporary appointment until such an election was called. Special elections are usually held in November of an even numbered year. Some States, however, have provided for special elections within a few months of the vacancy occurring.

Under the Constitution, a Senator must be at least thirty years of age, a citizen of the United States for at least nine years, and a resident of the State from which he or she is elected.

B. Powers

The Founding Fathers intended the Senate to be a counterweight to the House. They believed that Senators would be older, more conservative and more representative of the established elites of their States. The House was to be "the grand repository of the democratic principle" but such an orientation might lead to short-sighted policies based on current mass passions. The Senate was thought of as a restraining, stabilizing more deliberative and knowledgeable body, which would protect the rights of both the elites and the States. This was to be accomplished in part through the differences in size, term and method of selection. Also each House was given slightly different powers. The House was given the responsibility of initiating all revenue bills and of impeaching officials. The Senate was given the power to confirm important presidential appointments (including nominations to the Supreme Court), and for trying impeached officials. The Senate also has the power to give advice and consent to the President on treaty-making and foreign policy matters. A two-thirds vote of Senators present is required to ratify an international treaty. The Senate elects the Vice-President if no candidate receives a majority of the electoral vote.

The Seventeenth Amendment by taking senatorial elections out of the hands of the State govenments, blurred the constitutional distinctions between the Senate and the House. Senators were no longer forced to choose between their conscience and instructions from their States; the ambassadorial aspect of their role has since been greatly diminished. As Senators have to appeal to a wider diversity of state-wide interests than do Representatives, they have appeared in recent times to be more liberal than the members of the House. The six year term has permitted Senators to acquire a degree of expertise in particular areas of legislation and government administration; they are generally seen as adopting a broad national perspective on issues. This is not to say that Senators are unconcerned with the interests within their particular States; however, their individual judgements may differ from those of their State's governor, the State legislature, mayors of large cities or county commissioners or any particular interest group. Indeed, there is no single spokesperson for a State's interest; its views will be expressed through a variety of national, state and local institutions.

It is generally understood that the intentions of the Founders have not been precisely realized through the evolution of this bicameral legislative structure. Nevertheless, bicameralism has meant that each House must consider every piece of legislation separately, within its own institutional context, noting the constitutional and political equality between each. Separate action must be taken by each House and this has led to different decisional frameworks, restraints and considerations which in turn has led to different consequences.

The Senate has been described as being very much like a gentlemen's club; although, there are now two women Senators. It gives off an impression of informality; its rules have remained basically unchanged since 1884 and observance is often more the exception than the rule. Basically any form, rule or procedure in the Senate may be changed by the Senate. Its schedule is independent from that of the House and can easily be altered to meet changing political circumstances. It varies for year to year, but on average the Senate spends around 200 days in session. The schedule is directed by ad hoc considerations and therefore it is determined on a day-by-day or week-by-week basis as business dictates.

Smaller than the House, the Senate is also less disciplined and centralized. Today Senators are more equal in power than Representatives are. In the past seniority was a dominant organizational feature of the Senate. However, present day Senators are much less willing to serve an 'apprenticeship' under their senior colleagues. Now, even very new Senators get top committee assignments; some even become chairmen of key subcommittees. Since there are only 100 Senators each one can expect to serve on several major committees.

One item unique to the Senate is the filibuster. In the House, debate can be ended by a simple majority vote. Priding itself on freedom of discussion, the Senate traditionally permitted unlimited debate on a bill. If debate is unlimited, opponents of a bill may try to talk it to death. Recent rule changes make it easier to close off debate. Today, sixty members present and voting can halt a filibuster. Still the process is very cumbersome and it only takes forty-one Senators to hold up legislation indefinitely. Individual Senators retain an extraordinary power to delay proceedings; nevertheless, they are normally persuaded by institutional norms and informal pressures by colleagues not to do so.

Although debate on the floor of the Senate catches national attention, it is the committees which dominate congressional policy-making in all its stages. Committee structure is established on the basis of functional areas; their importance is based on a combination of their subject area and membership. Internal Senate reforms during the 1970's decentralized power within the chamber so that subcommittees and their leaders now play a larger role in the review of legislation. However the party leaders and senior committee chairmen still control the legislative schedule. An enormous number of bills is presented to Congress every year (more than 20,000 in 1977-78), of these only about five precent become law. A new bill, once introduced into either the House of Representatives or the Senate, is registered and immediately referred to a committee or a subcommittee. The 97th Congress that began in January 1981 had a total of 298 committees and sub-committees as follows:

House:	25 committees with 139 sub-committees
Senate:	20 committees with 104 sub-committees
Joint:	4 committees with 6 sub-committees

The committee or subcommittee may hold hearings on the bill, it may amend the bill, kill it (by not reporting it), or substantially rewrite it. This is where most of the lobbying efforts in Washington are expended.

American Senators are very well served. It is not uncommon for a Senator's staff to include 80 or 90 people, many of whom might have expert qualifications in law, public accounts, economics, defence or other policy specialities. In addition to the renowned Library of Congress and the Congressional Research Service, each committee and subcommittee of the House and Senate have expert staffs which may go as high as 200 individuals.

Legislative staff conduct the research, line-up witnesses, write and rewrite drafts. Only bills getting a favourable committee report will be considered by the whole House or Senate and substantial rewriting may have occured in the interim. Committee members help stage manage the bill when it reaches the floor of the House or Senate and the committees themselves continue to exercise legislative and administrative oversight by continuing to monitor the bureaucracy and its administration of policy. Oversight gives Congress the power to pressure agencies and, in the extreme, to cut their budgets in order to secure compliance with their

directives. Both Houses of Congress are equally effective in their use of committees. Legislation must run the gauntlet of each House. However, Senate committees have a particularly important role to play with regard to scrutiny of Presidential appointments, international treaties and the conduct of foreign policy.

As the volume and complexity of government legislation has increased, spurred on in the twentieth century by a major economic depression, two world wars and the Korean and Indochina conflicts, the legislative initiative has significantly shifted from Capitol Hill to the White House. Presidents are also their own best lobbyists; they have many formal and informal powers and sources of influence and persuasion. While by no means entirely dominating, Presidential power, with respect to setting the legislative agenda for the nation and influencing its progress, is considerable. Congress has reorganized and modernized its operations with the Reorganization Act of 1970 and the Comprehensive Budget Act in 1974. Congress has also demonstrated that under certain political conditions it can exercise considerable power in its struggles with a President. The conflicts with President Nixon provide the best examples where, as a result of the Vietnam conflict, Congress was able to override a Presidential veto of the War Powers Act of 1973, the first legislation ever enacted that defined the President's war powers. The ultimate struggle was over the Watergate scandal which severely tested the powers of the Presidency, Congress and the Supreme Court. These events weakened the political legitimacy of the Presidency for a time, but it appears that President Reagan has successfully restored a great deal of its prestige and he has proven to be most astute and effective in his dealings with the Congress.

C. Resolution Of Conflict Between Upper And Lower Chambers And The President

Conference committees are formed when the Senate and the House pass a particular bill in different forms. It is a special joint committee which usually consists of three to nine "managers" appointed by the Speaker of the House and the President of the Senate. Its purpose is to resolve the differences in the two chambers' versions of the bill. A majority of the managers from each chamber must agree

to the compromises worked out in the conference committee. If compromises are achieved, and they often are, then the agreement, in the form of a 'conference report' is taken back to both Houses for ratification. No amendments are permitted at this stage.

Important bills frequently end up in conference committees; differences over bills of lesser importance are usually ironed out by securing the agreement of each chamber to the other's amendments. Many important bills are substantially rewritten in conference or are killed through failure to secure a compromise. Meetings of the committees are always secret. A number of conference committees may be operational simultaneously, and several may consider different aspects of the same bill.

Once a bill has been approved by the House and the Senate in identical form, it is sent to the President. If he signs it, the bill becomes law. If the bill is unacceptable to the President he can veto it by explaining his objections and returning it to the House that first approved the bill. The President does not have an item veto which would allow him to accept some parts of a bill while rejecting others. If Congress is not in session, the President can kill a piece of legislation by exercising a pocket veto and not signing the bill within ten working days after it reaches him. When Congress is in session, bills become law if the President takes no action within ten working days.

It is possible for the Congress to override a President's veto. If two-thirds of each House vote in favor of the legislation after it has been returned to them by the President, it will be enacted despite the President's disapproval. This does not happen often. The President's position would have to be very unpopular for his veto to be thus overridden.

V. Other Aspects Of Intergovernmental Relations

The availability of large sums of money through federal grants-in-aid has created an interesting phenomenon -- the 'intergovernmental lobby'. This is made up of many separate, diverse and sometimes overlapping organizations of mayors, governors, city managers, superintendents of schools, state directors of public health, county highway commissioners, local police chiefs and others who have a distinct interest in securing federal funds. By 1981, 31 individual States, more than two dozen counties and over one hundred cities had opened offices in Washington. There are many formal and informal grouping of States and cities with similar interests, in terms of size, function or geographic proximity; some of the most prestigeous and active national organizations include, for example, the National League of Cities, the United States Conference of Mayors, and the Council of State Governments as well as national and regional Legislative and Governors' Conferences.

Of particular importance is the Council of State Governments, a joint governmental agency of all States, created, supported and directed under the respective laws of each. It seeks to improve State governmental practices, to expedite interstate cooperation to solving interstate, regional and national problems, and to facilitate federal-state relations. The semi-annual meetings of the National Governors' Conference have become forums for political negotiations on a number of issues and they have provided an occasion for the Governors to catch the attention of Washington. Cities and counties have similar nationwide organizations.

Efforts are made to secure interstate cooperation in the development of uniform State laws to cover subjects in which nationwide uniformity is desirable but where the States wish to retain legislative control. Responsibility for drafting and presenting proposed uniform and model laws is vested in the National Conference of Commissioners on Uniform State Laws. These efforts have met with only modest success.

Interstate cooperation may also be secured through the interstate compact, a constitutionally permitted device that enables two or more states, with

the consent of Congress, to enter into an arrangement (in effect, a treaty) for joint action. The Port of New York Authority and the Upper Colorado Basin Compact are two prime examples. In recent years this approach has been used to supplement the system of uniform state laws by providing a means for collective adherence to uniform administrative standards particulary in the public welfare field. The Education Commission of the States is another example of a nationwide compact designed to enable the states to work together on educational techniques and standards without reliance on Washington.

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d) FEDERAL REPUBLIC OF GERMANY

CONTENTS

THE FEDERAL REPUBLIC OF GERMANY

I. Type of Government

Republic, parliamentary democracy, federation.

II. General Background

West Germany is a modern industrial state of some 61.8 million inhabitants.

The origins of modern Germany can be traced to the patchwork of states of the Holy Roman Empire. The present state was constructed out of territory controlled by the allied powers after the Second World War, which they divided into provinces or Laender. Some of these had an historical basis such as Hamburg and Bavaria, but others such as North Rhine Westphalia and Lower Saxony were new constructions. The Federal Republic, as constituted in 1949, contained eleven Laender, excluding West Berlin, which remains technically outside the federation. Territorial adjustments in 1951 resulted in the three south-western Laender becoming one (Baden-Wurttemberg); with the return of the Saarland in 1957 the number of Laender has stood at ten.

The Laender vary widely in population, area and resources. The largest, Baden-Wurttemberg, now has over 17 million inhabitants, the smallest, the city state of Bremen, barely 700,000. Constitutionally all Laender are committed by the Basic Law (the Constitution of the Federal Republic) to adhere to democratic and republican forms of government. All have written constitutions and all but one (Schleswig-Holstein) have a system of judicial review through their own constitutional courts. All Laender are subject to the general principle that federal law takes precedence over Land law. Unicameral legislatures are the rule (except Bavaria). In all Laender except the city states the government is headed by a

Minister President (Premier), whereas in Hamburg and Bremen the Burgermeister constitutes the executive. In the case of the two city states (as well as West Berlin) the Land authorities assume the major functions of local government. Although the Laender have generally common constitutional arrangements there are substantial differences in administrative structures, in the organization of local government as well as minor variations in constitutional and political practice.

Although most Laender are recent territorial constructions they have become well established in the loyalities of their citizens. With the exception of Bavaria, local traditions, religion and culture have become attenuated so that the Laender reflect what can be described as regional variations within a basically homogeneous society.

German federalism is significantly different from the North American - Australian model, characterized by a vertical division of functions between the federal authorities and the member states such that each level of government is coordinate with and independent of the other. Though the principle of coordinate and independent powers does play some part between the federation (Bund) and the Laender, as defined in the Basic Law, more important is the horizontal division in which the Bund has the bulk of legislative powers, either exclusively or concurrently while the Laender are responsible for the greater part of administration (the implementation of of both federal and Land laws) and the provision of services directly to the population. The bulk of law-making authority rests with the federal authorities especially under the extensive list of concurrent powers. Here the Laender may legislate only in so far as the federal government has not made use of the same powers. Further the federation's stated concurrent powers may be exercised whenever they bear upon matters which cannot be effectively regulated on a Land basis, where individual Land regulation would damage the interests of other Laender or the national interest, and where it is generally desirable to maintain legal and economic unity, and uniform standards of living. The Laender have residual legislative competence allowing them to take supplementary or complementary action in three spheres: education (up to university level), police and the general framework of local government. However, the Laender exercise a significant role in the federal legislative process through the Bundesrat.

III. Units Of Government

In many respects Germany is a fairly typical parliamentary system. The President of the Republic is the head of state in a role not unlike the Canadian Governor General. The Chancellor is a position similar to that of Prime Minister. The Bundestag is the lower House and the Bundesrat or Federal Council is an Upper House in which the Laender are directly represented. The constitutionality of the laws is decided by the Federal Constitutional Court.

A. The Executive

The President is elected by an electoral college of the Bundestag together with an equal number of representatives from the Land assemblies. The appointment is for a five year period; an incumbent may be re-elected only once. The position is largely ceremonial. He proposes the candidate for Chancellor, although his choice is limited to the individual who has the support of a majority of the Bundestag; he appoints ministers on the Chancellor's recommendation, and can dissolve the Bundestag under certain situations involving a conflict between the executive and the Lower House.

The Chancellor is elected in a secret ballot by majority of the Bundestag without debate, on the proposal of the Federal President. The federal government consists of the Chancellor and the federal ministers. Federal ministers have substantial autonomy and relatively secure tenure in office. Most ministers are members of the Bundestag; they may not be members of the Bundesrat.

B. Popular Chamber

The Bundestag is the supreme federal legislative body. It is freely elected consisting of about 520 members for a four-year term (the 22 members from Berlin may only take part in an advisory capacity without being entitled to vote, leaving only 498 members with full voting rights). The Bundestag must form into a parliamentary majority to elect the federal Chancellor and support the government. Governments as a rule have remained in office for the whole session of the Bundestag. However, the Bundestag can bring down the government by expressing its lack of confidence in the Chancellor by electing a successor in a majority vote. This 'constructive vote of no-confidence', as it is called, is designed to prevent a situation arising in which a government is toppled without a new one being formed. There is a legitimate parliamentary oppositon which attempts to offer alternatives to government policies. This legislative process differs from the British parliamentary system in the amount of influence the House will exercises on draft legislation. As the government does not have to resign or to ask for a vote of confidence whenever it fails to gain the approval of the majority for a proposed bill it matters little if its bills are changed by the Bundestag. However party discipline is strong and party groups form the basis for the organization of the House; a party group of at least 26 members may introduce bills directly into the Bundestag. Thus the government is not entirely at the mercy of the House, but it must work to establish agreement on political goals and strategies through informal contact with the leadership of the majority faction.

The electoral system is best described as a form of 'personalized' proportional representation. Half of the members of the Bundestag are elected as individuals in local districts by plurality vote and the other half from lists presented by the parties in each Land. Each voter has two votes, one to choose the constituency representative and the other for the party list. It is the second vote which is decisive for determining a party's total number of seats. For example, in the 1981 general election, the Christian Democratic Union in Hess recorded 39.8 percent of the total vote in that Land entitling it to 19 of the 46 seats for Hesse. Since the CDU had won three district seats on the first vote, it received a further sixteen

seats via its party list. A small party might not win any seats outright but could be entitled to seats from the party list. If, as occasionally happens, a party wins more district seats than it is entitled to on a proportional basis, it keeps the additional seats and the size of the Bundestag is increased accordingly. There is a fairly high electoral threshold for a party to receive any seats from its list. A party which fails to win 5 percent of the federal vote (or three district seats) does not share in the proportional distribution at Land level; although if it won one or two district seats it would keep them.

IV. Upper Chamber: The Bundesrat (Federal Council or Council of Constituent States)

The participation of the Laender in federal legislation and administration by means of a States' House, has been a traditional element of German constitutions. Such an institution existed in the German Federation of 1815, in the North German Confederation of 1867, in the 1871 Reich of Bismark and in the Weimar Republic. As a federal organ, the Bundesrat has a role only in the federal sphere, not in matters concerning the competence of the Laender.

A. Method of Representation

The members of the Bundesrat are appointed by the Land governments directly. Every member has an alternate and can be recalled or changed by the government that made the appointment. The votes of evey Laender must be cast en bloc, according to the instructions of their government; no member votes individually. The Laender governments usually nominate as their members their Premiers and other Cabinet Ministers corresponding to their number of votes. Most are heads of ministries, which means that the Bundesrat can benefit from their specialised

knowledge and technical experience. The Bundesrat has no legislative term, it cannot be dissolved. Its membership can vary through a change of Land government or the membership of a Land government, or through the retirement of individual members or their election to the Bundestag. It is an unwritten law of the Constitution that simultaneous membership of both the Bundestag and Bundesrat is not permissible.

Each Land can send as many members to the Bundesrat as it has votes. Laender with over 6 million inhabitants have five seats each (North Rhine Westphalia, Bavaria, Baden Wurttemberg, Lower Saxony), those with over 2 million four seats (Hess, Rhineland-Pfalz, Schleswig-Holstein), and those with less than 2 million three seats (Hamburg, Bremen, the Saarland). The Bundesrat has 45 members, or whom 41 enjoy full voting rights. There are four Berlin members, who like their colleagues in the Bundestag are fully entitled to vote only in committees and not in the main body. The Bundesrat takes its decisions on the basis of a majority of its votes, so that 21 votes are usually required for a decision in plenary session. In cases requiring a change in the Constitution a two-thirds majority (28 votes) is prescribed.

Sittings of the Bundesrat take place in the Bundeshaus in Bonn. Members speak from a rostrum in front of the seat of the President of the Bundesrat. The members of the federal government also present have the right, and on the request of the Bundesrat, the obligation to participate in sessions. Therefore, there is a government bench occupied by federal ministers available to explain bills that they have promoted to the Bundesrat.

In the early years of the republic, a flourishing multiparty system meant that Land govenments were controlled by a variety of party groups such that no clear party blocs developed within the Bundesrat. With the gradual disappearance of many minor parties the party composition of the Bundesrat has taken on greater significance. Particularly after 1969 when the majority party group of the Bundesrat has been in opposition to the government party in control of the Bundestag partisan conflict became more noticeable. Even so, some 90 percent of all federal legislation is uncontested by the Bundesrat, which demonstrates the effectiveness of the mechanisms for conciliation and compromise.

B. Power

The Bundesrat has a number of ceremonial powers and some real powers which have nothing to do with its legislative role. Its President, who is chosen for one year on a rotating basis, takes precedence immediately after the Federal President and acts as head of state in his absence or indispositon. Half of the members of the Federal Constitutional Court are chosen by the Bundesrat; it has the right to nominate representatives to a considerable number of official bodies with both executive and consultative functions. Each House has the right to impeach the Federal President before the Federal Constitutional Court.

Under the terms of the Basic Law, the Bundesrat must be kept informed by the federal government of the conduct of affairs. Accordingly, the rules of procedure of the Bundesrat give every Land the opportunity to address questions to the federal government. These questions are not limited to the legislative agenda.

The Bundesrat has a legislative initiative, the right to prepare bills, with respect to any legislative matter within the federal power. The draft legislation must however be sent to the federal government which must then submit it to the Bundestag within three months. The federal government has the responsibility to state its own view on the draft. The subsequent treatment of the legislation is the same as that accorded to any other bill. Most legislation is introduced by the government. The number of bills introduced in the Bundestag and promulgated in the Federal Gazette between 1949 and 28 March 1983 stand as follows:

	Introduced	Promulgated
Federal Government	3,405	2,899
Members of Bundestag	1,870	710
Bundesrat	294	85

With respect to government legislation the government first sends its draft to the Bundesrat, which discusses it in the 'first reading' of the bill. This may involve a plenary discussion and referral to a committee or several committees for detailed consideration. In this passage the Bundesrat is entitled to state its position within six weeks. This means that the Bundesrat may approve the bill, reject it or recommend amendments or additions. The federal government then

transmits the bill, together with the comments of the Bundesrat, to the Bundestag, at the same time putting forward its own view on the proposals of the Bundesrat. Bills which the federal government has declared to be particularly urgent may be transmitted to the Bundestag after only three weeks, even though the statement of the position of the Bundesrat has not yet been received. The draft budget law is transmitted simultaneously to the Bundesrat and the Bundestag.

After the Bundestag has accepted or amended the bill, it is again submitted the Bundesrat for 'second reading'. Each clause of the draft is voted upon separately. At this stage the Bundesrat is required to decide within three weeks whether to raise objections or not. If it objects, it is then entitled to invoke the Mediation Committee to attempt to work out the difference. The committee procedure is normally successful. In that case the compromise must be submitted to and accepted by both Houses.

In the absence of amendments, 'third reading' follows immediately which ends with a vote on the bill. Some ordinary legislation may be amended or rejected by the Bundesrat but the objection may be overridden by the Bundestag if it votes to do so with the same majority. For example, if the Bundesrat has lodged its objection with a two-thirds majority, the Bundestag needs a two-thirds majority of votes cast in order to over-ride. The minimum required to over-ride a Bundesrat objection is an absolute majority of the Bundestag or 250 votes. In any event, the Bundesrat retains the right to state its view on every such bill.

There are however the so-called laws of consent in which the Bundesrat has an absolute veto. These include laws amending the constitution (which require a two-thirds majority of both Houses); laws concerning the rights of the Laender with regard to fiscal matters and taxation and laws affecting the rights and interests of the Laender with respect to the administration of federal laws. As a result of the last of these requirements, any measure which depends on the Laender for its implementation and for that reason is held to affect their rights and interests is subject to Bundesrat consent. This has been interpreted to apply to an entire legislative proposal, notwithstanding the fact that only a small part of it may affect Land interests. Thus more than fifty percent of all federal laws require Bundesrat approval.

Most ordinances having the force of law which are introduced by the federal government are subject to the consent of the Bundesrat. Here the experience of the Laender in executing laws is important. If the Bundesrat requires amendments, the federal government may only issue the ordinance in the version approved by the Bundesrat. If the federal government does not agree with the proposed amendments, it must try to obtain the Bundesrat's assent by submitting a revised text. As well as ordinances, general administrative regulations, which are introduced by the federal government and which govern the practical application and implementation of federal laws, are in most cases subject to the consent of the Bundesrat.

As a general principle, the Laender execute federal laws in their own right. But the federal government exercises supervision to ensure that the Laender execute the laws in accordance with the applicable statutes. The Bundesrat is involved in this 'federal supervision', insofar as it is empowered to decide whether the Laender has violated the applicable law. If a Land fails to comply with its obligations the federal government may, with the consent of the Bundesrat, take the necessary measures to enforce compliance.

The functioning of the Bundesrat cannot be fully appreciated without recognizing the influence of the expertise of a highly qualified Land bureaucracy, which injects its opinions into the legislative process through its committee system. Laender bureaucrats, who often replace their ministers at the committee stage, are often more experienced that their federal colleagues, as they are in charge of administering many of the measures introduced by federal legislation. Although many of the proposals of the Land bureaucracy may appear to be technical, this is not to say that they do not reflect the fundamental political interests of Laender governments. It is not unheard of for a Land interest to be in reality a party political objection. Nevertheless the success of the process has demonstrated that partisan considerations have not ovewhealmed practical and pragmatic concerns or lost sight of the needs of the entire nation.

The participation of the Laender in federal legislation and administration, through the Bundesrat, means that the federal government and the Bundestag must be continually aware of the support or opposition their policies can expect from Land governments. Thus there is - especially between the first and

second legislative passages in the Bundesrat - an intensive exchange of views and consultation between bureaucrats and politicians at the federal and the Land levels so as to ensure final approval by the Bundesrat. On many occasions there is extensive consultation between the federal departments and the corresponding Laender departments before a draft even goes to the legislature and may continue after its passage. The federal government has only a fragmentary administrative apparatus and is prepared to recognize the administrative expertise of the Land representatives. This is the reason why in most cases the ultimate consent of the Bundesrat has been forthcoming.

C. Resolution Of Conflict Between Upper And Lower Chambers

The Mediation Committee plays a very important role in the legislative process and has proved to be a thoroughly practical, innovation in German constitutional law. The Committee is composed of 11 members of the Bundesrat and 11 of the Bundestag. The Bundesrat can put before it any bill on which it is not in agreement with the Bundestag. In order to help secure agreement, the Bundesrat members of the Mediation Committee are not bound by any directives in their deliberations or voting. If the members of the committee propose an amendment to the bill, the Bundestag must vote on the matter once more. The bill then goes forward to the Bundesrat again. If, on the other hand, the Committee proposes no amendment, the bill goes back to the Bundesrat unchanged. The Bundesrat now has to take a final decision on whether to enter an objection or not. The Mediation Committee can be asked by the federal government or the Bundestag to consider a matter, but these cases are rare.

The Committee has helped considerably in smoothing differences between Bundestag and Bundesrat and in so doing has facilitated the legislative process. From 1949 to 28 March, 1983, the convening of the Mediation Committee was demanded on 497 occasions. After its involvement only 51 laws could not be passed and promulgated.

Through the Bundesrat the Laender have a considerable voice in the policies of the federation, but in practice the Bundesrat has used its powers discretely and only a few bills have miscarried through rejection by the Bundesrat. As a rule, the Bundesrat has avoided clashes with the federal government or Bundestag. In this connection it is notable that the Basic Law has been amended more than 30 times since 1949, in most cases in order to vest new powers in the federation. In all these cases the Bundesrat has agreed to the changes even though the amendments have narrowed the legislative powers of the Laender.

V. Other Aspects Of Intergovernmental Relations

In addition to the system provided for under the Constitution, an ever-extending network of relationships and a complex system of consultation and coordination has developed over the years. These contacts may be based on legislation, on written or unwritten agreements as well as informal arrangements.

At the institutional level, the Laender traditionally maintain contacts with the federal government through permanent delegations in Bonn. These missions are often headed by a Land minister who is also that Land's permanent representative to the Bundesrat. Their task is to bring the interests of the Laender to bear not only in the two legislative bodies but also within the federal government, and to keep the Land governments informed about all important parliamentary proceedings and about federal government business.

Other centers of joint decision-making activities are the conferences of Premiers and the various conferences of Ministers. These conferences take different forms. The conference of the Premiers of the Laender has no staff; the business is managed by the Chancellery of the presiding member. This conference has no permanent committees or working groups, except that the chief executive officers of the Premiers usually assemble before each conference. The conference sits three or four times a year. According to the federal government's standing

orders, the federal Chancellor is obliged to invite the Premiers to joint discussions about important political matters. This is similar to Canadian and Australian meetings of First Ministers.

At present, there are 14 conferences of Ministers, the organizational structures of which are quite different. For example the conference of the Ministers of Education has a permanent staff of about 150 at Bonn, headed by a Secretary General. Beyond the conferences and their committees exists a large number of study groups. In these study groups, executives and representatives of the Laender governments work with delegates of the federal government. The study groups, committees and conferences deal with a variety of issues ranging from daily routine questions to important political issues. Normally the resolutions and decisions need the unanimous votes of all members and the readiness of each Land to implement them. Resolutions, which, according to the Constitution, need the consent of other institutions within a Land or the federal government, come into effect only when these conditions are fulfilled.

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e) UNITED KINGDON OF GREAT BRITAIN AND NORTHERN IRELAND

CONTENTS

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

I. Type Of Government

Constitutional monarchy, bicameral parliament, unitary state.

II. General Background

On the island of Great Britain (population: about 54.5 million) are the countries of England, Scotland and Wales. Northern Ireland or Ulster (population: about 1.5 million) is composed of the six northeastern counties of the neighbouring island of Ireland. Together they are governed by the Parliament of the United Kingdom. Although some may argue over the exact origin of the British political system, the conquest of William the Conqueror in 1066 is often taken as a convenient starting point. The history of the regime has not been without its dramatic moments including civil wars, invasions and revolutions; however, the evolutionary nature of its development has left it without a specific document that can be pointed to as a constitution. There has been no distinct break with the past that has established an entirely new constitutional order; indeed, it is the oldest continuous constitutional system under consideration by this committee. This does not mean that there are no documents which have set down the basic principles which regulate the conduct of British political life. The earliest is the Magna Carta of 1215 in which the barons (the landed aristocracy) set limits on the authority of the hereditary monarchy. Other basic documents emerged from the constitutional struggles of the seventeenth century: the Petition of Right (1682), Habeas Corpus Act (1679), Bill of Rights (1689), Act of Settlement (1710), Act of Union with Scotland (1707) and the Place Acts (1740's). Additional constitutional statutes which emerged from the success of the nineteenth century reform movement expanded the franchise and further limited the rights of the Monarch to control Parliament. British constitutional principles

continue to undergo codification; examples from this century include such laws as the Parliament Acts (1911 and 1949), the Statute of Westminster (1931), the Ministers of the Crown Act (1937), the Life Peerages Act (1958), and the Peerages Act (1963).

The principle of continuity is a fundamental feature of the British constitutional framework; many significant elements of that constitution have become established through the elevation of practice and usage into convention. Such cornerstones of the system as the use of precedence in common law, the unitary state, ministerial responsibility, cabinet solidarity, the role of Her Majesty's Loyal Opposition, and the supraapolitical monarchy have all evolved in this way and have not required a statutory base.

Such a constitutional framework might seem unstable as it is subject to change by any ordinary Act of Parliament or in some cases by executive action. Nevertheless it has worked well for a remarkably long time; changes have not been made abruptly or without careful deliberation.

Parliament is composed of the Sovereign, as head of state, and a bicameral legislature consisting of an elected House of Commons and a hereditary and appointed House of Lords. Life peers, Lords who hold their position only for the duration of the life of the bearer have been appointed since 1958. Although the Monarch retains some significant prerogative powers her role is essentially symbolic and ceremonial. Nevertheless it is a most revered institution. The Sovereign appoints the Prime Minister as head of government; the cabinet is Her Majesty's Government. Normally this is not a discretionary decision. The Prime Minister is the party leader who has the support of the majority of the House of Commons; the cabinet is likewise selected from that majority. The Prime Minister controls the cabinet's agenda and sets the general outlines of government policy. Although the Prime Minister is much more than "first among equals", due consideration must be given to the opinions expressed in cabinet and the relative political strength of senior cabinet ministers. Collective responsibility suggests that all major political decisions of the government are taken by deliberation and consent. All members of cabinet must support these decisions loyally, regardless of their own views, or they are expected to resign. A typical British cabinet includes about twenty senior ministers. The exact composition depends on the preferences of the Prime Minister,

although the heads of the principle ministries and the House Leader in the Commons are traditionally included, as is the Lord Chancellor. The cabinet is the most significant part of the ministry which may well exceed one hundred members including a few members of the majority party from the House of Lords.

III. The Role Of Parliament

The House of Commons is the pre-eminent chamber of Parliament. It consists of 635 members, 516 representing England, 71 Scotland, 36 Wales, and 12 Northern Ireland on the basis of representation by population. The electoral system is first-past-the-post, single-member constituency. The legal term of Parliament is five years; it is usually dissolved early by the Monarch on the request of the Prime Minister. All major legislation is initiated in the House of Commons, and no law can be enacted unless it is passed by a majority of the members present. The House also has exclusive control over the nation's finances; no supply can be granted or taxes raised without its consent.

The most important organizations in the Commons are the political party caucuses. The government works through its party caucus to ensure that its agenda receives the necessary support. Opposition to and criticism of the government's legislative agenda is organized by the leadership of the other major party with the support of its caucus. The scheduling of Parliament's daily and weekly activities, the designation of debates, arranging pairing, and providing lists of members to serve on Standing and Select Committees, are arranged by the party whips within the caucuses and by negotiations between them. The whips use the caucuses to ensure party voting discipline.

Much of the detailed consideration of legislation takes place in committee. Party discipline may be somewhat more relaxed in this forum but it is still important. There has been some relaxation of party discipline in recent years. The government has not insisted that every negative vote on a government measure

reflects a lack of confidence. This has permitted the Commons to make some technical and some limited substantive alterations to government legislation; however, a majority government should be able to retain sufficient control to prevent any serious alterations to the basic principles of their legislative proposals. Only once since 1924 has the Commons exercised its constitutional prerogative to remove a government from office by defeating it on a vote of confidence (the Callaghan government was defeated by a margin of one vote in March 1979; although this was a result of losing seats through defections and by-elections and not a caucus revolt).

IV. The Second Chamber: The House Of Lords

Although the House of Lords may be seen as a chamber of sober second thought for revising what has been described as "the inconsiderate, rash, hasty, and undigested legislation of the other House", it was not established for these theoretical purposes. Instead, it is a prime example of the British tradition of continuous constitutional evolution, of adapting ancient institutions to modern conditions. It is the lineal descendant of the King's Great Council or Curia Regis of the Norman and Plantagenet Kings. Its development as one part of a bicameral Parliament resulted from certain practical and political difficulties during the fourteenth century. At that time Parliament consisted of the Sovereign, certain of his subjects summoned by personal writ, and certain other subjects selected by the freemen. The House of Lords, as a separate part of Parliament, may be said to date from the first occasion on which the elected representatives of the freemen met together on their own. Its continuing development has consequently been tied to the growing independence and power of that body of commoners.

In 1649, during Cromwell's experiment with republican government, the Lords was "wholly abolished" but was revived after the Restoration in 1660. During the next century and a half the Lords was the dominant House of

Parliament. It was a small group of peers who were primarily responsible for ridding the country of the absolute reign of James II and instituting the constitutional monarchy by inviting William and Mary to the Throne. Thereafter, as the King's party, various groups of peers were very effective in managing elections to the House of Commons and keeping control of the lower house.

With the transformation of the House of Commons into a popular chamber and the crystallization of the theory of responsible government - that the cabinet should resign if it loses the confidence of the Commons - greatly diminished the authority of the hereditary upper chamber and the power of individual peers. The passage of the Reform Acts of 1832, 1867 and 1884 enfranchised the majority of male citizens and eliminated the system of 'rotten' boroughs (malapportioned electoral districts); the Ballot Act of 1872 guaranteed a secret ballot and a series of other legislative measures eliminated the most flagrant kinds of electoral corruption. The Lords also lost its original functions of impeachment and trial of peers; its privileges are now very similar to those of the Commons.

When the Lords continued to use their constitutional powers to reject bills that had passed in the Commons, especially the Finance Bill in 1909, the government introduced legislation to greatly limit their powers. The Parliament Act of 1911 effectively removed all power from the Lords but that of a limited delay. The Act, as amended by the Parliament Act, 1949, provides that any Bill passed by the House of Commons but rejected by the House of Lords can become law after one year, or in the case of a money bill after one month. As a result, financial legislation is completely under the control of the Commons and the Lords' ability to obstruct the actual processes of government is negligible. In fact, the Lords could be readily abolished by an ordinary act of Parliament which could be delayed for only one year. However the House of Lords retains its absolute veto over any bill which would extend the life of a Parliament. Any attempt to postpone an election beyond the stipulated five year period could successfully be challenged by the Lords. Similarly the removal of judges requires the approval of both Houses. In this way the House of Lords has an important role in the maintenance of the British electoral process and the independence of the judiciary.

Since 1911 the House of Lords has not attempted the outright defeat of any major legislative policies of the government. Nevertheless it has used its

expertise to make detailed and technical amendments to bills which has resulted in the substantial improvement of good deal of sloppily drafted legislation. The Lords may delay the passage of bills to allow for a more extended public debate on matters of importance and to offer interested parties an additional opportunity to have their views aired. Indeed the government may have second thoughts about the details of a bill and these can be incorporated during its passage through the Lords. The informal atmosphere of the Lords permits an orderly discussion of expert opinions without the constraint of partisanship or the fear that the life of the government will be imperilled. During the period of Labour government in 1974 - 77 the Lords felt free to introduce major amendments on controversial government proposals. The government of the day had a bare majority in the Commons and had to rely on third party support for its programs. These amendments were a source of great embarrassment as the government had difficulty in raising sufficient support in the Commons to defeat them. It was the government's failure to secure sufficient support in the Commons, and not the opposition of the Lords, which ultimately resulted in the demise of the its legislative intentions.

The rules of debate in the Lords are much less formal than in the Commons. The Lord Chancellor, who, although he is called the Speaker of the House of Lords is also a member of Cabinet and is appointed to his position, like any other minister, from the ranks of the party in power. He is expected to support the government and may take part in debates. He can vote in divisions but has no casting vote. Debate is more relaxed as the peers address themselves to their fellows and not through the Lord Chancellor. Questions concerning the order of speaking, the relevance of speeches and other matters of order are decided by the House itself. When the House of Lords is in committee the Lord Chairman presides. The committee system is much less elaborate than in the Commons. Only one standing committee is used for the review of government bills and occasional sessional and select committees report on special matters. Parties are also less important, although each has a leader and whips. Because of the class bias of its hereditary membership the Lords tend to identify with the Conservative Party, however with the introduction of life peers no government needs to be without representation. There are Lords who refuse to join the caucus of any party and thereby sit as independents.

The process of passing bills is the same in both Houses, but in the Lords a peer can introduce a bill without obtaining the leave of the House and move its first reading; although a bill not introduced by the government has a very slender chance of becoming law. Often private member's legislation which has been introduced into the Lords provides the basis for government legislation that is later introduced into the Commons. The government often introduces non-controversial legislation into the Lords; this helps even out the legislative time-table in each House and eventually saves the time of the Commons, as the legislation examined by the Lords usually requires little amendment. The Lords also takes primary responsibility for the introduction and examination of private legislation.

A major rationale for the continued existence of this ancient chamber is that it provides an additional debating assembly for the full and free discussion of any matter of public concern - at least as interpreted by the members of the House. Because of the general absence of financial legislation the Lords is not overburdened with work and therefore has the time to devote to the discussion of a wide range of concerns from matters which some might describe as frivolous to issues of great national importance. As the peers have no electoral considerations to bother with, they are free to express unpopular views and to advocate unconventional solutions. They have no constituency but their own consciences. Sometimes peers with considerable reputations in particular areas of expertise make substantial and informed interventions on the floor of the chamber, often to the discomfort of the government.

The House of Lords retains some symbolic and ceremonial functions as the senior House. It is in the Lords that the Queen opens Parliament at the begining of each new session by reading the Queen's Speech (Speech from the Throne) which has been prepared for her by the government and which sets out, in general terms, its legislative program. The Sovereign also participates, through Her Commissioners, at the proroguing of a session, the approving of a Speaker of the House of Commons, and the giving of the Royal Assent to bills which have been passed by both Houses. On these occasions the full Parliament is in session: the Sovereign on the Throne (or represented by Commissioners seated in front of the Throne), the Lords ranged down either side of the Chamber, and the Commons, headed by their Speaker, at the Bar.

The House of Lords shares most of its functions with the House of Commons, but its judicial functions as the highest Court of Appeal are peculiar to itself. This role was codified by the Appellate Jurisdiction Act of 1876, amended in 1887 to provide for salaried Lords of Appeal (who now number 9) and retain their peerages for life. Although the judicial functions are carried out by these Law Lords, as they are called, other qualified Lords might be invited to assist if a sufficient number of Law Lords (at least 3) were not available. They now hold their meetings in a separate meeting room but their rulings are reported to the House, which alone is responsible for the judgment. The Lord Chancellor is both Speaker of the House and Head of the Justiciary.

The House of Lords does not act as a constitutional court in the manner of the Supreme Court of the United States. It is not called upon to decide upon the 'constitutionality' of a statute. All legislation which has been properly enacted is constitutional, and no court of law can annul it. This is the basis of the concept of parliamentary supremacy.

Traditionally, the House of Lords has included all of the hereditary peers of the realm. These include the royal princes, dukes, marquesses, earls, viscounts, and barons, in order of precedence. Since the Life Peerages Act, 1958, there have been peerages limited to the life of the bearer. They are granted the rank of baron or baroness. This act also removed the previous general disqualification for women who were then given the right to sit in the Lords. However, the disqualification of hereditary peeresses remained but this too was eventually removed by the Peerage Act, 1963. Men and women are now on an equal footing with regard to admittance to either House of Parliament. Hereditary peerages still can be created, but none has been since 1964. There are, however, relatively few truly ancient titles; over half have been created in this century with an additional twenty percent created in the nineteenth century. Only about twenty percent of the current House of Lords can trace their titles back to the eighteenth century or earlier. The most important effect of the Peerage Act, 1963, is the provision which it makes for an hereditary peer to disclaim his peerage, thus abandoning all the rights and privileges of peerages and assuming the rights and status of a commoner.

At the present time, the Lords is composed of about 800 hereditary peers and peeresses, and over 300 life peers and peeresses. They are known collec-

tively as Lords Temporal. Only about 200 of them attend a typical sitting. In addition, the Lords includes 26 bishops of the Church of England who are described as Lords Spiritual and the 9 active Lords of Appeal. There is no explicit regional representation in the Lords; the great majority are from England but there are Lords from Ireland and Scotland although none are from Wales. Until 1957 the Members of the House of Lords were unpaid, but they are now entitled to a tax-free expense allowance for each day on which they attend the House, as well as funding for secretarial assistance.

In 1969 the Parliament (No. 2) Bill was introduced with bipartisan support and with the intention of substantially revising the House of Lords. Its most radical proposal was to be the eventual exclusion of hereditary peers. The reformed House was to have a nucleus of about 230 full-voting regular members with an outer-circle of non-voting members who could attend and participate in the proceedings of the House. The House would retain a six months suspensive veto. Provisions were also made for Lords Spiritual and the Law Lords. This effort failed to get the support of many backbenchers on both sides of the House and was eventually dropped. The Labour Party remains unhappy with the difficulties it faced during the 1974 - 77 period (as noted above) and it is committed formally to the abolition of the Lords, the Liberal Party is committed to its replacement, and the Social Democrats to its reform.

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F. REPUBLIC OF FRANCE

CONTENTS

REPUBLIC OF FRANCE

I. Type Of Government

Republic, executive president, bicameral parliament, unitary state.

II. General Background

France is a nation of nearly 54 million people. It is a unitary state which is organized into administrative units called departments. The national government combines the features of an executive president with parliamentary government. Parliament consists of the popularly elected National Assembly and an indirectly elected Senate. The Constitutional Council decides on the constitutionality of legislation, executive actions, and treaties, as well as on the legislative competence of the National Assembly; it decides also on the validity of contested national elections and referenda.

The Constitution of the Fifth Republic originated in the collapse of the Fourth and the return to office of General Charles de Gaulle. It was ratified by popular referendum in September 1958. The new Constitution set forth two major reform themes: first, the reconstitution of the authority of the state under strong executive leadership in the office of the President of the Republic; and, second, the establishment of what came be be known as a "rationalized" Parliament — a Parliament with limited political and legislative powers which could no longer dominate the executive as it had under earlier regimes.

The President of the Republic is head of state, elected by popular vote for seven-year renewable terms. The Prime Minister, appointed for an indefinite term by the President, is head of government; he must have the confidence of a majority of the National Assembly and the President. Most governments, to-

date, have required support from a coalition of parties within the National Assembly. In general, government business is conducted by the Council of Ministers, composed of the Prime Minister, other senior cabinet ministers, and chaired by the President. The President decides on the composition of the government and sets forth its general policy directions. He has special powers in foreign affairs and defense; his constitutional position enables him to take a leading role in any policy area that draws his attention. The President can dissolve the National Assembly or replace the Prime Minister solely at his discretion. He can also take issues directly to the people through a referendum.

The Prime Minister is responsible for leading and supervising the day-to-day activities of the government and for managing its parliamentary majority. Ministers may not sit in the National Assembly but they have full access to parliamentary committee and floor deliberations, including the right to speak, but not to vote.

The government can exercise considerable authority over the legislative agenda; it is government legislation which comprises the vast majority of successful enactments. The government can influence the amendment of legislation by insisting on a "blocked vote" — requiring that the Assembly or Senate take a single vote on all or part of the bill under discussion, retaining only the amendments proposed or accepted by the government. It can declare certain bills to be urgent and thereby accelerate legislative consideration. The government's most powerful and controversial weapon is passive enactment. When it "engages its responsibility" on a bill, that bill will be declared enacted if no motion of censure is passed within a twenty-four hour period. The government is therefore prepared to stake its life on that legislation. This is highly unusual; only 4 bills have ever been passed in this manner. Finally the government may enact the annual budget by decree if Parliament fails to act within an allotted time. This has never happened.

The Presidents of the Republic, Senate and the Assembly each appoint three justices to the Constitutional Council which also includes all ex-Presidents of the Republic. This body is ultimately responsible for ensuring the maintenance of the Constitution.

III. The Role Of Parliament

Under the Constitution, Parliament is summoned for a session, begining on October 2 and lasting for no more than 80 days with a second session, to begin on April 2, which lasts for no more than 90 days. Special sessions, not to exceed 12 days in length and to deal with a specific agenda, can be called at the request of the Prime Minister or a majority of the National Assembly.

The physical arrangement of each chamber resembles that of the United States Congress. Members sit in a semicircular scheme, but because of the many parties it is difficult to have a clear-cut dividing line between government and opposition. Deputies and Senators are grouped according to party affiliation, ranging from the far left (presiding officer's left) to the extreme right.

The Constitution provides that "law is voted by Parliament." Members of both Houses have the right to initiate legislation. However, Members cannot introduce bills which either diminish public financial resources or create new expenditure. This limitiation does not apply to the government which, in fact, initiates the great bulk of successful legislation. Financial bills must be submitted first to the National Assembly.

The legislative authority of Parliament is divided. Parliament can legislate in detail on the following: civil rights and obligations (nationality, contracts, gifts and inheritance); crimes and criminal procedures; taxation and currency; electoral systems; public institutions; economic plans including nationalization and denationalization of enterprises. However, it is limited to establishing only broad policy outlines in the general organization of national defense; education; property rights; employment, unions and social security; administration of local government units. In all other areas, except for declaring war, ratifying treaties, and voting the budget, the Constitution permits the government to legislate by decree. Furthermore, Parliament can be asked to delegate to the government special legislative authority for certain policy objectives for a limited period of time.

The National Assembly has 491 seats, each Deputy representing a single-member district. Each of the ninety-six departments is guaranteed at least

two seats. Also, seventeen Deputies represent French overseas possessions. Members are chosen by direct, popular vote for five-year terms, all seats being filled at the same election. There may be two rounds of balloting. If a candidate wins more than 50 percent of the popular vote in his constituency he is declared elected. If not, there is a second round held exactly one week after the first; here only a simple plurality is required. Candidates receiving fewer than 12.5 percent of the first-round vote must withdraw; other candidates with little chance of success usually do likewise. Most run-offs include only two candidates.

An unusual feature of this system is the constitutional requirement for each candidate to designate an alternate who will represent the district if the candidate is elected and later resigns to accept governmental office, is elected to the Senate or appointed to the Constitutional Council, or retires or dies. This was designed to prevent Deputies from holding ministerial office while avoiding a rash of by-elections after the formation of a government. Even so by-elections are still held, averaging about three a year.

The ultimate parliamentary weapon is a motion of censure against the government. Only once has the National Assembly of the Fifth Republic ever voted to censure a government and then to disastrous consequences. In 1962 the Assembly passed a want of confidence in the government which had been supporting President de Gaulle's plan to revise the constitution by popular referendum. The President immediately dissolved the rebellious Assembly and his supporters won a larger majority in the new Assembly than had ever been the case in republican France. Similar motions have been attempted but only a few have even come close to being successful.

IV. The Second Chamber: The French Senate

A. Powers

The framers of the Constitution saw the Senate as a conservative ally which would help curb the power of the National Assembly and, therefore, sought to give it a more important role than the second chamber had had in the

Fourth Republic. This has not happened. Governments have generally been able to rely on maintaining majority support in the National Assembly while the more diverse make-up of the Senate has made it somewhat less malleable to government interests.

With a few exceptions the formal powers of the Senate equal those of the National Assembly. Finance bills must be submitted to the National Assembly first. But, should the Assembly fail to act within 40 days, the government can then introduce the bill in the Senate. If the two houses cannot agree on a bill, it dies, unless the government intervenes to call for a conference committee composed of members chosen from each house. Even if this committee formulates a compromise acceptable to the representatives for both chambers, its agreed draft can be submitted to both houses only if the government approves and only with those amendments that the government favours. If the committee fails to secure agreement, then the government has the option of asking the National Assembly to act. Its decision is final regardless of the views of the Senate.

Presumably, if the cabinet and Senate were of like mind and the Assembly hostile, the Senate could be employed to exercise a veto over legislation. On the other hand, the Senate can be over-ruled if the cabinet and the Assembly agree; it cannot block legislation on its own. But the government can benefit from the Senate's legislative vote when it finds it convenient. Since the Senate lacks the power to censure the government and remove it from office, oposition control is of little consequence.

The Senate, usually defending traditional concerns, has disagreed with the government on many major policy decisions. The conflict over the revision of the Constitution of 1962 led to a pitched battle between the upper house and the President of the Republic. The President of the Senate used his constitutional position to denouce in the Senate and before the Constitutional Council the violation of the Constitution by President. Other important legislation has also been opposed but was eventually enacted in spite of senatorial dissent. Nonetheless, of the 1,300 laws enacted by parliament between 1958 and 1974, only 50 were passed over the opposition of the Senate. On all other controversies, joint committees were able to arrive at a compromise text. It is generally recognized that many of the technical and legal amendments proposed by the Senate, working in a more deliberative and leisurely fashion, have resulted in improvements.

B. Electoral System

The 883 Senators are chosen for a nine year term, with one-third of the membership retiring alternately every three years. To qualify for the Senate a candidate must be 35 years of age (compared to 23 years for a candidate to the National Assembly). Because of its age restrictions, its less political character, and the longer term for its members, the Senate tends to attract local notables or distinguished elder statesmen, rather than the more active and ambitious politicians found in the National Assembly.

Senators are chosen through indirect elections: 310 are elected by electoral colleges:

1. 296 from Metropolitan France
2. 8 from Overseas Departments
(c) 6 from Overseas Territories

In addition 6 Senators are co-opted by the Senate to represent French citizens living abroad. These six are elected by the Senate on the basis of nominations by the Supreme Council of the French Abroad.

To vote in a senatorial electoral college an elector must be a Deputy to the National Assembly, a mayor, delegate or general councillor from a department or minicipal council. An electoral register is prepared by the Departmental Prefect as the Department represents the electoral constituency. The register is compiled with names, birthdates and addresses of voters who are notified of their registration in writing and who can appeal if there are inaccuracies in it. It is revised before each election.

The electoral colleges, composed of representatives of local authorities, is complex in detail. Under the 1975 census, the colleges contained a total of 119,000 municipal councillors and delegates, 3,529 departmental councillors and 474 deputies. Overall the colleges are biased in favor of small rural municipalities, as even the tiniest local authority has one delegate, with the resulting effect that the third of the population which lives in places under 3,500 inhabitants has slightly over half the delegates. This rural over-representation has favoured the Centre-Right parties, mostly Conservatives or Radicals. The Gaullists which held

power in the National Assembly during the first two decades of the Fifth Republic were in a continual minority in the Senate; hence the considerable tension between the two chambers and between the government and the Senate. This helps to explain the fact that the Senate has not seen its status increase under the Fifth Republic as had been anticipated. A similar situation exists today with a strong Senate majority that is not Socialist, and which thus stands in opposition to President Mitterrand.

Four different electoral systems are used for senatorial elections. There are fifteen departments and territories which are single-member districts; each chooses their Senator by majority vote with a run-off vote on the same day if no candidate wins a majority on the first ballot. The fifteen most populous departments with at least five seats each (a total of 97 seats) use a proportional representation system (method of the highest average). The remaining departments with from two to four seats each (198 seats), use the majority system with multi-member districts and a runoff ballot. Abstaining from voting without a justifiable reason will result in a modest fine. Finally, the six Senators who represent French citizens living abroad are nominated by an official governmental advisory council, the Supreme Council of the French Abroad, composed of representatives of their local associations. Its choices are ratified routinely by the Senate.

Senatorial candidates have alternates similar to those of Deputies. Alternates for the candidates in the departments using the majority electoral systems are nominated as their running mates. In the departments that use proportional representation, the highest-ranking unsuccessful candidate on the Senator's party list is the replacement.

The Constitutional Council validates the election results and may be called upon to settle any disputed elections.

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DOCUMENT C.

PROPORTIONAL REPRESENTATION

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PROPORTIONAL REPRESENTATION

I. INTRODUCTION

Elections are the mass participation events of Canadian politics. To many Canadians they are the most visible and exciting aspects of the political process. The primary function of any electoral system is to provide for a periodic review of the performance of the political leadership and for an orderly and democratic change of government. The electoral result permits the winning party to form the government and gives the party leaders a mandate to pursue their programs.

Any voting system, no matter how well designed, will have some kind of bias. It will encourage one party at the expense of another, or it will promote the interests of large parties at the expense of small parties or independents. There is no ideal system which, if properly applied, will perfectly reflect the democratic will. Voting systems have to be tailored to meet the differing needs of each specific legislature. One principle consideration is whether the system of government requires a majority party or whether it can tolerate a larger number of relatively small parties. Electoral systems reflect the political temperment of the people and their traditions. No electoral system exists in isolation from its broader political and cultural environment, nor from the other political institutions which it supports. No electoral system is inherently neutral.

It is arguable that the present Canadian electoral system (single-member constituencies, first-past-the-post) provides the Canadian political system with electoral majorities and consequently with government stability. This assertion has its critics who point out that in recent years only in the elections of 1940, 1958 and 1984 did a majority of voters actually support one party. Moreover, Canada has experienced sustained periods of minority government where no one party has held a

majority of seats in the House of Commons. As a general rule, the present system has given the party with a plurality of the votes more seats than its percentage share of the vote would justify. Although, even here there have been exceptions, the most recent being 1979 when the Liberal Party acquired a plurality of the votes but received fewer seats than the Conservatives who then formed a minority government. A major criticism of the Canadian electoral system is that it provides disproportionate regional representation to the party caucuses in the House of Commons. The Pepin-Robarts Task Force on Canadian Unity, stated this case for electoral reform in the following way:

> The effective and harmonious operation of any federal system depends very much upon the degree to which the central institutions are considered in their operation to be fully representative of the major groups within the federation....
>
> The simple fact is that our elections produce a distorted image of the country, making provinces appear more unanimous in their support of one federal party or another than they really are.... Under our current electoral system, which gives the leading party in popular votes a disproportionate share of parliamentary seats in a province, the regional concentration in the representation of political parties is sharply accentuated. This makes it more difficult for a party's representation in the House of Commons to be broadly representative of all the major regions.
>
> In a country as diverse as Canada, this sort of situation leads to a sense of alienation and exclusion from power.(1)

These concerns have been mitigated by the stunning national success of the Progressive Conservative Party on September 4, 1984. However, even this success has left a truncated Opposition with serious deficiencies in its regional representation. It is also clear that mere tinkering with electoral procedures will not, in and by itself, cure the sense of alienation at least as experienced in recent years by the people of Western Canada. In this regard, the conclusion of the 1984 Report of the Special Joint Committee of the Senate and House of Commons on Senate Reform, rejecting the use of proportional representation for an elected Senate, is instructive:

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(1) Task Force On Canadian Unity, A Future Together: Observations And Recommendations, Ottawa, Supply and Services, 1979, pp. 104-105.

> We recognize that, in the absence of proportional representation for an elected Senate, the political parties will have to work hard to achieve balanced representation from across the country in the Commons and the Senate. This is as it should be. In striving to do this, they will have to adapt their policies accordingly, and this can benefit national politics.(1)

This paper neither advocates nor disavows the use of proportional representation as an approach to the problem of securing broader representation for Canada's national parliament. The purpose is to examine the various methods of proportional representation that have been seen to work effectively in modern democratic states. There is a distinct bias towards European political systems instead of Third World societies because the history, values and democratic philosophies of these states will most closely resemble our own. The paper concludes with a very general discussion of the advantages and disadvantages of proportional representation, leaving the reader free to balance the arguments and to draw his or her own conclusions.

II. PROPORTIONAL REPRESENTATION: Electoral Procedures

In 1918 Mr. J. Fischer Williams, Treasurer of the Proportional Representation Society, estimated that there could be some three hundred systems of proportional representation in existence, noting that the "ingenuity of inventors shows no sign of exhaustion"; more recent authors suggest that there could well be double that number today. (2)

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(1) Report Of The Special Joint Committee Of The Senate And Of The House Of Commons On Senate Reform, Ottawa, Queen's Printer, 1984, pp. 24-25.

(2) See, Maude, Rt. Hon. Sir Angus, and John Szemerey, Why Electoral Change? The Case For P.R. Examined, Conservative Political Centre, London, United Kingdom, 1982, p. 17.

Most democratic electoral systems have as their basic premise the maxim, "one man, one vote". Also, the value of that one man's vote should, as nearly as practicable, be the same as that of every other man's vote. The aim of proportional representation is to ensure that the elected legislature will accurately reflect the opinions of the voters, if possible of all the voters. Proponents of P.R. often use metaphors to argue that a truly representative assembly should be to the political divisions in the nation as a map is to the territory it represents or as a mirror reflects whatever is placed before it. Majority systems, they argue, cannot provide such an assembly. Wherever one is in place the majority party inevitably has more assembly seats than its share of the total popular vote warrants, and all other parties have fewer seats than their proportionate shares would indicate. Furthermore, majority systems, tend to restrict the number of participating political parties as it is difficult for small parties to win seats. The legislatures which result from a majoritarian electoral system cannot, therefore, directly represent all of the various shades of political opinion that reside in the electorate. This conclusion assumes that the varieties of political opinion can only be reflected by ideologically coherent political parties.

Proportional representation was introduced in Denmark as early as 1885, followed by Swiss cantons in 1891, Belgium in 1899, Moravia in 1905 and Finland in 1906. These states consist of linguistically and religiously divided societies where simple majority electoral victories could undermine the entente between the different social groups and thus threaten the existence of their political systems. Proportional representation seeks to represent the major societal factions in the legislative assemblies in direct proportion to their strength in the community. In the early years of the twentieth century, as pressures mounted for the extension of suffrage, demands for proportional representation were heard in more homogeneous societies. In these situations it was the development or survival of rival political parties that supported the demands for a proportional electoral system. Conservative parties based on a landed gentry could see their electoral strength eroding as their proportion of the new electorate was decreasing; they sought P.R. as a guarantee for their survival. On the other hand working class parties hoped to use the same process to gain early access to the parliamentary institutions and subsequently to governmental power.

The proportional systems now used in modern democratic nations are variations on two basic types: party-list systems and the single-transferable-vote system.(1)

A. Party-List Systems

In all party-list systems political parties are the basic units for which representation is sought. They all involve multimember constitutencies, in which voters are confronted with lists of candidates nominated by the leaders or executive committees of the various parties. The counting process is designed to distribute seats in the legislative assembly as nearly as possible in accordance with each party's share of the total popular vote. Party-list systems differ from one another only in the degree to which voters can register their preferences for individual candidates, as well as for whole party lists.

Most party-list systems set an arbitrary threshold which requires that a party have a certain minimum percentage of the popular vote before it is entitled to any seats in the legislative assembly. The barrier is erected against the so-called nuisance value posed by minor splinter groups, as well as denying parliamentary legitimacy to antisystem parties. The Netherlands has no such minimum threshold; Israel insists on a threshold of one percent, Denmark two percent, Sweden four percent and West Germany five percent. The threshold distorts

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(1) The descriptions of the various types of proportional representation and the computational mechanisms used to effect the proportionate results have been developed from the following sources: Austin Ranney, The Governing Of Men, Third Edition, The Dryden Press Inc., Hinsdale Illinois, 1971, pp. 281 - 287. Stein Rockkan, "Electoral Systems", in David L. Sills, Editor, International Encyclopedia Of The Social Sciences, Vol. 5, pp. 12 - 19.

The major sources for the description of the various European electoral systems is World Encyclopedia Of Political Systems And Parties, two volumes, edited by George E. Delury, Facts On File Publications, 1983, New York, N.Y.; Valentine Herman and Francoise Mendel, Parliaments Of The World: A Reference Compendium Inter-Parliamentary Union, De Gruyter, Berlin, 1976; and Enid Lakeman, The Power To Elect: The Case For Proportional Representation, William Heinemann Ltd., London, U.K., 1982.

the concept of full proportionately; the very small parties are denied representation and the parties which survive are subsequently over-represented. It has worked most effectively in West Germany where between 1961 and 1983 only three parties have won representation in the national legislature.

In these systems there are typically no by-elections. In the case of a vacancy, through death or resignation, the seat passes to the candidate next in line on the party list.

There are four main subtypes of party-list systems presently in use.

1. No Choice Among Candidates

In the elections for the Israeli Knesset (parliament) the entire nation is one constituency electing all 120 members. Any party that can muster the signatures of 750 eligible voters can submit a list of up to 120 candidates, arranging them in whatever order it wishes. Each party has a separate ballot paper; the voter selects the paper of his party and deposits it in the ballot box. There is no way that he or she can indicate preference either for particular candidates on the party's list or for candidates on the lists of other parties. Whatever number of seats each party is entitled to according to its percentage of the total popular vote is filled by candidates as their names are ordered on the lists.(1)

One consequence of the Israeli electoral system is that there is no tradition that an elected member represents the interests of a particular constituency. That is difficult to establish with a party-list system in any case, but in Israel the emphasis is on the member representing the nation at large. While differing philosophical and religious points of view become very salient, there is little sense of being attached to regional or local interests.

Israel is the only democratic nation currently using this particular type of party-list system; it was also used for elections to the German Reichstag from 1919 to 1933, the Czechoslovakian parliament from 1919 to 1938 and 1945 to 1948 and the French National Assembly in 1945 and 1946.

(1) Leonard J. Fein, Politics In Israel, Little, Brown & Company, Boston; 1967, pp. 97-98.

2. Altering The Lists To Provide A Limited Choice Among Candidates

In the second type of party-list system the voter may vote either for one party's list in its entirety or for a limited number of individual candidates on a particular list. If the electors choose the latter course, they indicate their desire to move their preferred candidates to the top of their favored party's list. If a majority of the voters for a particular list rank order a candidate or candidates differently from the party's preferred order of candidates, the voters' choices will prevail when the seats are distributed. In practice it requires a very sophisticated and dedicated political effort to alter a party's list. The results of this voter participation appears to be very marginal changes to the party lists. The party leaders remain in control. Indeed, some systems allow the parties to manipulate their own lists to appeal to certain sections, regions or groups of voters. Typically these party manipulations have more effect than individual voter changes in determining exactly who will serve in the legislative assembly.

The Netherlands provides one of the best examples of "pure" proportional representation. The exactness of proportionality is achieved by treating the whole country as a single constituency, with the result that a party's representation depends entirely on its aggregated national vote. There is no arbitrary threshold for a party to secure representation. Voting is entirely by means of party lists, although candidate's names are given and voters may change the presented order. The country is divided into eighteen electoral districts, and a party is free to presents lists in as many districts as it chooses and to present different lists in the individual districts.

The Belgium Chamber of Representatives has been elected by proportional representation since 1900. Electors may vote either for the whole party list or select a preferred candidate from the list, but it is not possible to split votes between parties. Party lists are presented at the district (arrondissement) level. Seats are first distributed according to the size of the party votes within the arrondissement, and any remainders are carried over for a further distribution within the province. Proportionality is thus secured on the basis of multimember districts, but not necessarily for the country as a whole.

Elections to the 155 seat Norwegian Storting are based on 19 constituencies which vary from four members to fifteen. In each constituency voters choose between party lists containing at least as many candidates as the constituency has seats. Voters may strike out individual names from one party's list and replace them with names from other lists or none; this has only had the most marginal effect on electoral outcomes.

The Swedish Parliament is directly elected on a proportional basis. Of the 349 seats, 310 are divided among the country's 28 multimember constituencies in proportion to the number of registered voters in each constituency. The remaining 39 seats are divided between the parties and are allocated in a manner to ensure that party representation in parliament corresponds as closely as possible to the national distribution of votes. Electors may add or remove names on a party's list, but this has little or no practical political significance. More importantly, a party can run more than one list under its label and votes for these lists are aggregated when calculating the total party vote. A party may put forward different lists in different regions of a constituency, or a list may be drawn up with one eye on a particular category of voters. After the vote, the multiple lists are merged to form one rank order list.

3. Full Freedom Of Choice Among Candidates

Under the third type of party-list system each elector has as many votes as there are seats to be filled from the voter's particular constituency, and he or she may distribute those votes as he or she wishes. The voter may register several votes for a particular candidate or one vote each for several different candidates. He or she may also vote for particular candidates on several party lists. The votes are totalled for all candidates on each list, and seats are allotted to each party in accordance with its proportion of the total vote for all lists. Each party's quota of seats in each constituency is then filled by the party's candidates receiving the largest numbers of votes. This system, also called "panachage," is now used in elections to the Swiss National Council and to a number of cantonal councils, as well

as in elections to the Eduskunta (parliament) of Finland, and the Chamber of Deputies of Italy.

For elections to the Italian Chamber of Deputies the country is divided into 32 constituencies, each grouping two or three provinces. There is one single-member constituency, the others range in size from two to 47 seats. Each party presents a list of candidates up to but not exceeding the number of seats allocated to the constituency. Joint lists are permissible. The elector votes for a party list, but under the panachage system the elector may also indicate between three and four preferences among the candidates, depending upon the size of the constituency. The voter may also strike out candidates, which cancel out other voters' preferences. The candidate who receives the most preferences in each party moves to the top of the party list. There is thus a rank ordering of candidates in each list, with those at the top having a better chance of being elected.

The 200 member Finish Eduskunta is elected from multi-member districts ranging from nine seats to 21, with one single-member exception. Although two or more parties may join together to form an election bloc, they still present separate lists. The voter casts his ballot for an individual candidate, but it is also tallied for the party list on which it appears. The number of votes for each list and/or bloc is recorded. Each candidate of a unified voting group (list or bloc) is then assigned a "comparison number" based on the following formula: the leading candidate in each bloc is assigned the total vote of that bloc, the second-leading individual is assigned one-half the total vote of that bloc, the third receives one-third, and so on. Once these computations are made for each bloc, all candidates are ranked according to these figures, and the available seats are assigned on the basis of this ranking. The vote for the individual candidate helps determine his ranking within the bloc, while the simultaneous vote for the party list helps determine the party's proportion of the available seats.

The electoral system for the Swiss National Council has been in place since 1919. Under this process, the voter has to make two decisions: which group or party to vote for and whether to leave the list of candidates as prepared or to change it. If the latter, the voter may strike out a name; rearrange the order of listing the names; emphasize a name by writing it in a second time; or add new names, including those taken from other party lists. Indeed, a voter can obtain a

blank list and fill in his own candidates. This arrangements benefits particularly popular candidates running for smaller parties. The major parties have tried to prevent the manipulation of their list but with only limited results. Parties can expect to have from one-third to one-half of their lists altered by the voters and this can have a significant impact on the electoral process.

4. Mixed Systems

The Bundestag, the lower house of the West German parliament, is elected by a mixed proportional/direct representation system. Every elector has two votes, one for the candidate in his constitutency and the other for the party list presented for each Land (province). Half of the 496 representatives are elected directly from single-member constituencies. The other half are elected from the party lists.

The second vote is decisive for determining a party's total number of seats in the Bundestag, while the first vote partly influences which members of the party will have seats. The distribution of seats is made on a Land basis, and there is no provision for securing overall national proportionality. For example, the Christian Democratic Union (CDU) in Hesse at the 1981 federal election recorded 40 percent of the total vote in that Land which (after the elimination of the vote for smaller parties who failed to clear the 5 percent electoral threshold) entitled the CDU to 19 of the 46 seats for Hesse. Since the CDU had won three district seats on the first vote, it received a further sixteen seats via its party list. A small party, such as the Free Democrats (FDP), may not win any district election outright, in which case all its members elected will be drawn from the party list. If, as occasionally happens, a party wins more district seats than it is entitled to on a proportional basis, it keeps the additional seats and the size of the Bundestag is increased accordingly. In that case, of course, none of the party's elected members in that Land come from the party list.

The Italian Senate is also elected on the basis of a modified direct/proportional system. Each of the country's 20 regions is divided into single-member

constituencies, roughly equal in population. A candidate may run in up to three constituencies. Candidates receiving 65 percent of the poll are automatically elected. The remaining seats are distributed on a proportional basis within each region.

The Danish electoral system is one of the most complex in the world and cannot be fully explained here. Although it is based on a party-list system of proportional representation it allows parties to use three different types of party lists, plus combinations of those three, and to use different types in different constituencies. It also permits the voter to choose one of three different ways of registering a preference. Finally, a two-tier allocation procedure first distributes 135 seats in seventeen constituencies by proportional representation in the constitutencies while forty supplementary seats are proportionately distributed on the basis of the total national vote received by each party, taking into account the allocation of the previous 135 constituencies.

B. The-Single-Transferable-Vote System

All party-list systems operate on the assumption that the voter is most interested in supporting a particular political party. All single-transferable-vote systems operate on the contrary assumption that voters are more interested in individual candidates than in parties and should be given maximum freedom to indicate their preferences for individuals.

Each constituency elects several members to the legislative assembly, and any individual can obtain a place on the ballot by petition, with or without a party designation. The voter indicates his or her order of preference among the various candidates as in the preferential-ballot system, marking numbers in the boxes besides their names. An "electoral quota" is figured according to one of several possible formulae. The ballots are then sorted according to the first-place choices for each candidate. If no candidate receives enough first-place choices to satisfy the quota, the candidate with the fewest first-place choices is dropped, and his or her ballots are redistributed according to their second-place choices on each.

The process of dropping the low candidate and redistributing his or her ballots is continued until a sufficient number of candidates have satisfied the quotas and are declared elected. If a candidate receives more than the electoral quota, the surplus votes (the alternate-choice preferences) are distributed among the other candidates in the appropriate proportions.

This system is now used for the election of members to the Irish Dail, the Australian Senate, particular houses of the parliaments of the Australian states of Tasmania and New South Wales; it was introduced in local elections in Northern Ireland in 1977. This system has been used in Canadian and American cities, notably in Calgary and Edmonton[1] and in Alberta provincial elections from 1926 to 1955.[2]

III. PROPORTIONAL REPRESENTATION: Mechanisms For Dividing The Vote

There are again two basic types of systems which follow from whether the system is based on party-lists or on the single-transferable-vote.

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(1) Enid Lakeman, The Power To Elect: The Case For Proportional Representation Chapter 6, "Local Government".

(2) Office of the Chief Electoral Officer, Alberta, A Report On Alberta Elections: 1905 - 1982, pp. 6, 8. With the exception of Calgary and Edmonton the province was divided up into single member constituenceis which used an alternative or preferential ballot. The constituencies of Calgary and Edmonton ranged from 5 to 7 members and used the-single-transferable-vote system. See Revised Statutes of Alberta, 1924, c. 34 for An Act respection the Election of Members of the Legislative Assembly. Section 82 describes the method of marking the preferential and transferable ballot; section 92 sets out the rules for the count.

A. Party-List Systems

Proportional representation as introduced on the European continent was a product of party bargaining. The parties saw that their chances for survival would be enhanced under a system that would allow them not only to control nominations but also to gain representation even when in a minority. The lists were set up by the competing political parties and although the voters might have some influence on the fate of individual candidates on such lists; it would be nearly impossible to elect anyone not appearing on the initial lists. The party-list mechanisms vary with respect to the "threshold level" or "cost" (in terms of the proportion of votes) required to gain the first seat in the legislative assembly and the corresponding threshold or cost for each additional seat. The debates and bargains over electoral arrangements in countries that have adopted a P.R. system based on party lists have centered on two questions: Should there be some gentle over-representation of the largest party? Should the threshold or cost for the first seat be set high enough to discourage new parties and splinter movements? The countries that have adopted these systems have spent considerable political effort in debating the relative merits of complex electoral formulae and have sought to fine-tune their own systems to meet the political exigencies of changing circumstances. Although several basic methods will be discussed below, individual countries and provinces have introduced their own special adjustments, indeed some have used combinations of different methods.

1. The d'Hondt Formula (Largest Average)

The variant most frequently used in continental Europe was invented in 1871 by the Belgium professor Victor d'Hondt: the method of the largest average. This method favors the largest party and, in fact, lowers the threshold very little in constituencies electing few members and choosing among few competing party lists. It requires a multimember constituency with a minimum of five seats to be effective. The addition of more seats will have a marginal effect on the formula.

If the total number of votes cast is designated a V, the total number of mandates (seats) as M, and the total number of parties as P, the threshold formula for the d'Hondt procedure will read:

$$T = \frac{V - 1}{M + P - 1}$$

This means that the smallest number of votes (T) required for representation will be a function not only of the size of the constituency and its share of seats but also of the number of parties. A fragmented party system lowers the threshold but, by implication, also increases the over-representation of the largest of the parties (particularly if P is greater than M), since the votes for a number of the small parties must of necessity go unrepresented.

This method is currently in use in elections to the Israeli Knesset, the Swiss National Council, the Italian Senate and the Tweede Kamer der Staten-General (Second Chamber) of the Netherlands.

2. The "Greatest Remainder" Formula

The method of the "greatest remainder" lowers the threshold or representation to a minimum: the threshold formula is $T = V/(MxP)$. This is a direct invitation to party fragmentation, since the threshold decreases rapidly with increases in the number of parties. If all seats are not allocated on this basis (which is usually the case), then additional seats are awarded to those parties with the greatest remainders until all seats are filled.

3. The Sainte-Lague Formula Of Successive Division By Odd Integers

Under this mechanism developed in 1910 the threshold formula is $T = (V - 1)/(2M + P - 2)$. However the crucial contribution of this system is the successive division by odd integers which results in the progressive increase in the cost of new seats. The greater the number of seats already won by a party in a given constituency, the more votes it will take to add yet another. The d'Hondt formula

makes no distinction between first and later seats. The total votes cast for each party are divided successively by 1, 2, 3, etc. The Sainte-Lague method is to divide by 1, 3, 5, etc. Thus, if the first seat costs each party 1,000 votes, the second seat will cost the party (1,000 x 3)/2 = 1,500 votes and the third seat (1,000 x 5)/3 = 1,667 votes, and so on. This is definitely the optimal formula for small parties: it is easy to gain representation but hard to reach a majority in parliament. Since we are operating with a fixed number of seats, this lowering of the cost of obtaining seats leads to the allocation of more seats than are available. At the same time, it discourages mergers and cartels. Two small parties polling just beyond the threshold for their first seats will, in fact, lose out if they merge. Sweden uses this formula in its national elections.

4. The Sainte-Lague Formula Modified.

The Sainte-Langue formula was modified even further to ensure the perpetuation of the established party constellation by setting the entry threshold just below the typical voting levels of the smallest established parties. If the threshold were to be set much lower, it would increase the chances of even smaller, "anti-system" parties and encourage splinter movements. The solution proved very simple: the first divisor was set, not at 1, but at 1.4. In the example already used, this would mean that the first seat would cost 1,400 votes (compared with 1,000 votes in the unmodified formula), the second seat would cost 1,500 and the third 1,667 similar to the above situation. It would cost more to gain entry (the first seat), but once a party was in, the steps toward further representation would not be out of step with the original Sainte-Lague. Norway currently uses this procedure in its national elections.

B. Single-Transferable-Vote System

In the British based political systems the party-list approach to proportional representation never had much support. These countries exhibited a strong tradition of direct territorial representation through individual representatives. The early English advocates of proportionality were not so concerned with the survival of organized parties; they wanted to equalize the influence of individual voters. The great innovation of these electoral reformers was the introduction of a procedure for the aggregation of individual rank-order choices. The election was not to be decided through the counting of so many choices for X and so many for Y but through the comparison of schedules of preference.

The "alternative vote" system used for the Australian Senate is an excellent example of the process; the voter indicates his second, third choices, and so on, as well as his first, and knows that these lower preferences will be brought to bear if his first preference should not receive enough support. This method aims at the maximizing of support behind each candidate. First preferences count to the end, even when there are many more than needed to elect a given candidate. The great strength of the movement for the single-transferable-vote lay precisely in the insistence on the effective use of all the votes, not only for those candidates with the smallest followings but also of those "wasted" through overconcentration on a single popular candidate.

This required the setting of a quota -- the smallest number of preferences required for election. The inventors of the system, a Dane, Andrae, and an Englishman, Hare, set it at Votes divided by Seats, but this was quickly shown to be too high.(1) In 1868, H.R. Droop had no difficulty ind demonstrating that the correct quota would be Votes/(Seats + 1) + 1. This would be just enough to beat competitors for the last of the seats.

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(1) Alberta provincial elections (1926 - 1955) for the multimember districts of Edmonton and Calgary used the Hare system of proportional representation as set out in s. 92, The Alberta Election Act, R.S.A. 1924. For a complete explanation of the process see: John D. Hunt: A Key To P.R.: Being An Explanation of the Transferable Ballot, and of Proportional Representation as adopted by The Alberta Election Act, with full directions for the Counting of the Ballots, catalogued in the Alberta Legislature Library.

Once the quota had been set, the procedure was in itself straightforward, if time consuming. The wasted first preferences were switched to alternative preferences when the first ones could no longer help. For those candidates receiving the lowest scores, all their first preference votes were wasted and had to be examined for lower preferences, while at the top it was impossible to say which votes were wasted — which votes were in the quota and which ones were beyond. The solution was to work out proportional shares of lower preferences. If an elected candidate had received 10,000 first preferences but needed only 9,000, the below-quota candidates would get (10,000 - 9,000) / 10,000 = 1/10 of the second preferences given each of them by those 10,000 voters.

The Andrae variant of this system was used in the election of some of the members of the Danish Rigsraad from 1855 to 1866 and in the electoral colleges for the Upper House from 1866 to 1915; the single-transferable vote method has otherwise found acceptance only in Britain and the British-settled areas: Tasmania since 1907, the Irish Free State since 1922, Malta since 1921, New South Wales since 1932, and the Australian Senate since 1949.

IV. GENERAL ADVANTAGES OF PROPORTIONAL REPRESENTATION

The main advantage of proportional representation is that all votes count equally and that all electors can vote for (or by implication against) the government of the day, and for any political party of their choice. Very few votes are "lost", as it is only small minority parties (how small depends on the variation of P.R. used) that fail to win any seats; nor is any one vote worth more than any other; its value does not depend, as it would in single-seat pluratity system, on whether the vote is cast in a marginal or in a safe seat.

Proportional representation enables the legislature to more accurately reflect the views of the electorate, or more specifically to reflect the relative strengths of the political parties (especially under party-list systems) at the time of the election. Significant national minority parties which tend to be greatly

under-represented, in terms of their percentage of the popular vote under systems of direct representation, will be represented more in proportion to their percentage of the popular vote.

Relatively small changes in the popular vote will result in similarly minor changes in party status within the legislature, unlike the more volatile system of direct representation. This makes for greater governmental continuity. The governments usually consist of relatively stable party coalitions. Elections tend to only to revise the relative strengths of the coalition partners. Critics would argue that this is not a positive characteristic as it inhibits (but does not prevent) the possibility for a substantial reorientation of government policies.

The most significant argument for Canada is that the present electoral system distorts party representation in certain regions and provinces, leaving parties who have achieved significant proportions of the popular vote in some provinces with little or no representation. The classic rationale for the introduction of P.R. has been that it will more thoroughly represent the divergent interests of pluralistic societies - nations which must accomodate significantly diverse, regional or group interests. Proportional representation in Canada would ensure that the major national parties would have some minimal representation in every province. The problems of a truncated party system were clearly evident to Western Canadians during the 1970s and early 1980s. As noted earlier this has been mitigated by the election of a truly national Progressive Conservative government.

V. DISADVANTAGES OF PROPORTIONAL REPRESENTATION

The basic disadvantage of proportional representation is that the voter does not have the opportunity to choose a constituency representative for an his or her local area. All P.R. systems work best with a minimum five member constituency. The more members to be elected from each constituency, the more porportional are seats to shares of the vote. Electors do not have "their MLA" to whom they can go with their problems, who is willing to take matters up for them

with the appropriate Minister or authority and who may raise a matter on their behalf in parliament. Similarly, the elected members cease to be spokespersons for small local areas, concentrating instead on the overall concerns of their larger constituencies.

Proportional representation electoral systems, whether party-list or single-transferable-vote, result in a more complicated voting procedure than is the case when voting for a single member in a local constituency. For the average Canadian voter it would require a significant effort to learn the nuances of whatever system would be implemented. Even in Australia which has had plenty of experience with the process and the parties distribute "How-to-Vote" cards there is a substantial number of spoiled ballots. Also, the various computational methods produce slightly different results and work to the advantage of one group and subsequently to the disadvantage of others. The procedures are difficult to comprehend and this may reduce the legitimacy of the the system and may undermine voter participation.

Under most forms of P.R. (especially those variations which use party-lists) there are no by-elections. If a sitting member dies or retires, he or she is replaced by the next candidate on the list at the last election — or, if that candidate is no longer available to take the seat, then it is given the following candidate on the list. This system does not provide voters with the opportunity to express themselves during inter-election periods.

Small changes in the popular vote result in relatively small changes in the representation alignment after most general elections. In one sense it provides for a very stable (often politically dull) system. Individual members are not likely to feel the same kind of direct pressure of those facing their own constituency electorate every four years and may therefore be more complacent.

The party-list forms of P.R. are severly criticized for the power that this system places in the hands of the party elites. Members who have no constituencies and thereby no local base of support will own their entire allegiance and their seats in parliament to the party bosses who put them high enough on the party list to be elected. If they lose favour, at the next election they may find themselves so far down the list that they stand little chance of being elected, or they may not be on the list at all.

Some party-list systems provide for considerable freedom of choice, but it requires an exceptionally well informed electorate and even then the opportunity for the electorate to effect significant change is quite slight. The single-transferable-vote provides for greater input by the informed elector but again the national parties retain a considerable influence.

Lastly, most critics of P.R. argue that its most serious disadvantage is that it is not conducive to creating a working government. This is particularly true when the electors vote for a government and for a parliament at the same time as is the case for British style parliamentary systems like Canada. The argument is that P.R. in British-style parliamentary systems, creates unstable multiparty situations, deepens ideological fissures and lowers concensus. The traditional pattern of Canadian brokerage politics with centrist political parties would be expected to give way to a system of more competitive special-interest parties.

DOCUMENT D.

SUMMMARY OF CERTAIN PUBLIC DOCUMENTS ON SENATE REFORM

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INDEX OF DOCUMENTS ON SENATE REFORM

1. Special Joint Committee of the Senate and of the House of Commons, Report, (Molgat-MacGuigan), 1972.

2. The Kingston Communique, (Progressive Conservative Party, federal & provincial leaders), September 16, 1977.

3. Canada West Foundation: A Summary Report on the Pro-ceedings of - Alternatives Canada - A Canada West Conference on Confederation, prepared by Stanley Roberts, May 1978; cited hereafter as Canada West Foundation (1).

4. Canada West Foundation: A Summary Report on the Pro-ceedings of - Alternatives Canada - A Canada West Conference on Confederation, prepared by Stanley Roberts, May 1978; cited hereafter as Canada West Foundation (2).

5. The Constitutional Amendment Bill (Bill C-60), June 1978.

6. Canada West Foundation: A Summary Report on the Pro-ceedings of the Colloquia on Constitutional Change, prepared by Stanley Roberts, and David Elton, August 1978; cited hereafter as Canada West Foundation (3)

7. British Columbia's Constitutional Proposals, September 1978.

8. Alberta, Harmony In Diversity, October 1978.

9. Special Joint Committee of the Senate and of the House of Commons, Report to Parliament, (Lamontagne- MacGuigan), October 10, 1978.

10. Special Committee of the Senate on the Constitution, First Report on: The Subject Matter of Bill C-60, (Stanbury), October 18, 1978.

11. Committee on the Constitution, Canadian Bar Association: Towards a New Canada (a report prepared for the Canadian Bar Association but not adopted by it), 1978.

12. The National Progressive Conservative Party's Proposals for Constitutional Change: The Process of Constitutional Change; A Background Paper, and Discussion Paper No. 3; The Constitution and National Unity.

13. The Task Force on Canadian Unity: A Future Together, January 1979.

14. First and Second Reports of the Ontario Advisory Committee on Confederation, April 1978 and March 1979.

15. Canada West Foundation: Canadian Federalism and the Constitution: What is at Stake in the West, prepared by Stanley Roberts, April 1979; cited hereafter as Canada West Foundation (4).

16. La Federation des francophones hors Quebec: Face to Face with a Failing Country, April 1979.

17. The Constitutional Committee Of The Quebec Liberal Party: A New Canadian Federalism, January 1980.

18. The Standing Senate Committee On Legal And Constitutional Affairs, Report On Certain Aspects Of The Canadian Constitution, (Goldenberg), November 1980.

19. Canada West Foundation: Regional Representation: The Canadian Partnership, prepared by Peter McCormick, Ernest C. Manning and Gordon Gibson, September 1981; cited hereafter as Canada West Foundation (5).

20. Alberta, Strength In Diversity, October 1983.

21. Prince Edward Island, The Senate In A Federal System, December 1983.

21. Special Joint Committee of the Senate and of the House of Commons on Senate Reform, Report, (Molgat-Cosgrove), January 1984.

The summary of much of the pre-1980 data was compiled by Richard Shaw, Federal Provincial Relations Office, Ottawa, December 1979. However, any errors or ommissions are the sole responsibility of the Legislative Research Services Section of the Legislature Library of Alberta.

I. GENERAL COMMENTS

(1) Special Joint Committee of the Senate and House of Commons (1972)
- recommends the reform of the Senate, not its abolition (p. 34)

(2) The Kingston Communique
- agreed that provincial governments should be closely and formally involved in appointments to the Supreme Court of Canada and a proportion of those to the Senate (p. 5)

(3) Canada West Foundation (1)
- recommends the abolition of the Senate as it now exists and that there be created by constitutional amendment a new upper house to be styled the House of Provinces (p. 14)

(4) Canada West Foundation (2)
- strong consensus among delegates supporting the establishment of a permanent federal forum or chamber charged with representing regional interests, with fixed terms of reference and specific agenda (p. 6)

(5) The Constitutional Amendment Bill
- provides for the replacement of the present Senate by a new upper house styled the House of the Federation, S.56.

(6) Canada West Foundation (3)
- at the August Colloquia proceedings, agreement was reached on the following:

general consensus that the existing Senate is preferable to the House of the Federation proposal contained in the provisions of Bill C-60 (p. 15)

(i) it was generally agreed that Canada is in need of a second chamber which would perform a more active role in ensuring greater regional representation and under some circumstances checking executive power (p. 15)

(ii) there seemed to be a general aversion to changing the name of the second chamber, regardless of what substantive changes one made to the appointment procedure and/or role of that body (p. 16)

(iii) there was relatively little support for the House of the Provinces ideas developed at the Alternatives Canada Conference, by the Ontario Advisory Committee or anyone else, as it was considered to give provincial premiers too much power (p. 16)

(iv) there was general support for the idea of the need to maintain a viable federal-provincial conference procedure which would permit negotiations to take place between the two levels of government (p. 16)

(v) the Senate should be given a meaningful role to play in the decision making process, with enough prestige to ensure a high calibre of candidates (p. 16)

(vi) there was considerable discussion of and support for an elected Senate (p. 16)

(vii) the proposal in Bill C-60 that members of the Senate could be chosen to serve in the cabinet was rejected as it was felt that it would not be appropriate to have Senators in the cabinet (p. 17)

(viii) there was support, particularly in British Columbia, for a second chamber that would be half elected at large throughout the province, and half appointed by the provincial government; it was generally agreed by those who supported such an idea that this would be but a transition to an all-elected system (p. 17)

(ix) it was suggested that an elected upper house be given powers which would allow it to have considerable influence on national legislation and federal-provincial agreements, but that it would not completely thwart the principle of responsible government (p. 17)

(x) it was generally agreed that it was probably not possible to provide a safeguard for a single province such as Quebec through the delineation of senatorial powers; safeguards regarding language, the inalienable rights of provinces, and the division of powers can only be guaranteed in the constitution itself and the amending process which provides for such fundamental change (p. 18)

(xi) there was considerable support for the federal government's proposal regarding the utilization of a proportional representation system in the second chamber (p. 18)

(xii) there seemed to be a general consensus that the size of the upper house be maintained at about 100 members, and that provinces should be equally represented, or a very modest sliding scale of population size to representation be used (p. 18)

(7) British Columbia's Proposals (Paper #3)

- recommends that the Senate should not be abolished; it should be substantially altered (pp. 12 - 13, 33)

- recommends that the primary purpose of the Senate should be to institutionalize provincial or regional participation in the national law-making process (pp. 14-16, 33)

- recommends that the secondary purpose of the Senate should be to review legislation enacted by the House of Commons (pp. 14-16, 33)

(8) Alberta, Harmony In Diversity

- recommends an annual meeting of First Ministers to develop a consensus between the federal government and the majority provincial view on economic and fiscal policies; this practice should be recognized in the constitution (p. 17)

- there was no direct reference to the Senate

(9) Special Joint Committee of the Senate and House of Commons (1978)

- the overwhelming body of witnesses and a substantial majority of the members of the committee are prepared to recommend that the Parliament of Canada should have a second chamber and that the Senate as now constituted should be reformed (Issue #20, p. 17)

(10) Special Committee of the Senate (1978)

- in reviewing the subject matter of Bill C-60, as regards the Senate, the Committee reached the following conclusions:
  - (i) agrees that members of the House of the Federation should be appointed but sees problem in that appointments to the Senate are criticized as being favours conferred by the party in office upon the faithful; Bill C-60 does not answer this criticism and actually diffuses responsibility for the appointments (pp. 12-13)
  - (ii) in determining how the proposed House of the Federation would function as the main element in a system of checks and balances including a check on the executive, the Committee found that
  - (iii) should the House of the Federation, as projected in Bill C-60, reject or delay or amend legislation in a manner unacceptable to government policy, the Bill in question could be presented for Royal Assent within months, without its concurrence and in most cases without reconsideration by the Commons; the Committee feels that Canadians would not want to vest such absolute power in the executive (pp. 13-14)
  - (iv) there must be a balance, however, between curbing autocratic government and ensuring to the federal authority the clear power to deal decisively with national issues and national emergencies; a House made up of members owing allegiance to so many political leaders and characterized by fragmentation of political opinion could well be an obstructive force in the legislative process, even within the time allowed by the proposed limited power to delay passage of legislation (p. 14)

(v) Committee determined that the House of the Federation cannot perform as a body to revise legislation since (1) members of the House of the Federation would be concerned mainly with partisan political interests, (2) members have an uncertain and brief tenure (life of Parliament or of legislatures, subject to reappointment), and (3) the proposed method of selection would make the chamber a house of minority groups representing political parties and pursuing the purposes of these parties (pp. 14-15)

(vi) in evaluating how the House of the Federation would more effectively articulate regional interests of minority groups without frustrating the parliamentary process, the Committee concluded that solutions to regional complaints will not be found in any proposals to restructure a second chamber; they will emerge from programmes and policies of both federal and provincial governments, and can be recognized and projected in the hard realities of bargaining, compromise and agreement at the table of the Federal-Provincial Conference (Committee detected an underlying confusion in the minds of the proponents of Bill C-60 between a federal-provincial conclave and a parliamentary second chamber (pp. 15-17)

(vii) Committee concluded that the House of the Federation would be ineffective in carrying out an investigative role in matters of national concern since (1) members have limited tenure, (2) the House of the Federation is a highly partisan structure, and (3) the House of the Federation has a subservient role imposed upon it (p. 17)

(11) Canadian Bar Association

- there should be a reconstituted Upper House in the federal Parliament to represent the regional interests in federal matters (pp. 37, 43)

(12) Progressive Conservative Party's Proposals

- proposes that the Senate be replaced by a House of the Provinces (Discussion Paper #3, p. 6)

(13) The Task Force on Canadian Unity

- recommends the Senate should be abolished and replaced by a new second chamber of the Canadian Parliament to be called the Council of the Federation (pp. 97, 128).

(14) Canada West Foundation (4)
- recommends an elected second chamber to replace the present Senate to represent regional interests. (p. 12)

- the agenda of such a chamber should include that of a brokerage house, to hear and negotiate the ever-changing needs and concerns of the peoples in all the parts of Canada - not only those with large populations (p. 12)

(15) Ontario Advisory Committee's Proposals (Report #1)
- recommends that the present Senate should be abolished and replaced by a House of Provinces (p. 7)

(16) La Federation des francophones hors Quebec
- recommends that the present Senate be replaced by a House of the Federation

(17) The Constitutional Committee of the Quebec Liberal Party
- recommends the abolition of the Senate and its replacement with a new institution, the Federal Council; conceived to be a special intergovernmental institution and not a legislative assembly (pp. 46-47, 52)

(18) Senate Committee On Legal And Constitutional Affairs (1980)
- recommends that the constitution should state clearly, though in general terms, that the role of a reformed Senate would be as a representative and protector of the interests of the regions, and of linguistic and other minorities, in matters within federal jurisdiction (p. 35)

(19) Canada West Foundation (5)
- The resolution of the problem of effective regional representation should be sought primarily through a reformed upper chamber (p. 137)

(20) Alberta, Strength In Diversity
- the present Senate is not adequately performing its key function — the representation and protection of provincial or regional concerns within Parliament

- recommends that a First Minister's Conference on the Economy be held each fall to ensure consultation and cooperation in the development of joint economic and fiscal strategies and to facilitate pre-budgetary consultations; this conference should be entrenched in the constitution (p. 40-41)

(21) Prince Edward Island, Senate
- the present Senate has not been much of a champion of the interests of the smaller provinces -- this failure ought to be corrected (p. 9)

(22) Special Joint Committee of the Senate and House of Commons (1984)
- recommends that the Senate be directly elected by the people of Canada; its principle role should be regional representation (pp. 23-24)

II. SPECIFIC COMMENTS

A. COMPOSITION OF A REFORMED SENATE

(a) APPOINTMENT

(1) Special Joint Committee of the Senate and House of Commons (1972)

- recommends all Senators should continue to be appointed by the federal government: as vacancies occur in the present Senate, one-half of the Senators from each province and territory should be appointed in the same manner as at present; the other half from each province and territory should be appointed by the federal government from a panel of nominees submitted by the appropriate provincial or territorial government (pp. 33, 35)

- recommends that the personal requirements for appointment to the Senate should be limited to those required for eligibility as an elector in the Canada Elections Act, plus residence in the province for which a Senator is appointed; the Quebec structure of electoral divisions should be abolished (pp. 33, 36)

(2) Canada West Foundation (1)

- recommends that the House of Provinces consist of provincial (and territorial) delegations casting a single weighted vote (pp. 14, 42)

- recommends that provincial delegations be composed of Cabinet Ministers, members of the legislative assembly and civil servants (p. 16)

- recommends that all provincial premiers serve as ex officio members of the House of Provinces, and that the position of the President of the House of Provinces be filled by a Provincial Premier or his representative on a rotating basis (pp. 16, 42)

(3) Canada West Foundation (2)

- delegates to the "Alternatives Canada" Conference did not agree as to how the members of the new forum or chamber would be elected or appointed; they did agree that the method of appointment to the present Senate was not acceptable (p. 6)

(4) The Constitutional Amendment Bill
- provides that one-half of members of the House of the Federation be selected by the House of Commons within the first thirty sitting days of the House of Commons next following each general election of members of that House, S. 63(1) (a)

- provides that one-half of members of the House of the Federation be selected by the legislative assembly of that province within the first thirty sitting days of the legislative assembly next following each general election of members of that assembly, S. 63(1) (b)

(5) Canada West Foundation (3)
- if all of the previously mentioned comments were operational, it would recommend that:
  (i) Senators be elected on a province wide basis at the time of provincial elections (p. 19)
  (ii) Senators not be allowed to serve in the Cabinet (p. 19)

(6) British Columbia's Proposals (Paper #3)
- recommends that Senate members should be appointed by and removed by the provincial governments (pp. 22-23, 33)

- recommends the leading Senator from each province would be a provincial Cabinet Minister (pp. 22-23,33)

- recommends that there should not be any restrictions on the provincial governments in relation to the appointment of all other Senators (pp. 22-23, 33)

(7) Canadian Bar Association
- recommends that the members of the Upper House should be appointed and serve at the pleasure of the governments of the provinces (pp. 37, 43)

- recommends that the federal government should have power to name spokesman to the Upper House but they should have no vote (p. 37)

(8) Progressive Conservative Party's Proposals (Discussion Paper #3)
- recommends that majority of members be delegated by the provincial governments with a small number of federal appointments also being made (pp. 6, 7)

(9) The Task Force on Canadian Unity

- recommends that the Council of the Federation be composed of delegations representing the provincial governments and therefore acting under instruction; the provincial delegations could be headed by a delegate of cabinet rank (pp. 97-98, 128)

- recommends that central government Cabinet Ministers should be non-voting members so that they have the right to present and defend central government proposals before the council and its committees (pp. 97-98, 128)

(10) Ontario Advisory Committee's Proposals (Report #1 and #2)

- recommends that members be appointed by and represent the provincial governments and may include sitting members of provincial legislatures, Premiers or Cabinet Ministers (report #1, p. 8, report #2, p. 70)

- recommends that representatives of the federal government would be free and expected to participate in the House of Provinces in order to introduce and speak on Bills and to take part in and observe the debates, but they would not have voting privileges (report #2, p.71)

(11) Canada West Foundation (4)

- recommends in lecture that members to the new second chamber be elected, with one-half being elected at a time (say at three years) (p. 12)

- recommends that elections held at times other than with provincial or federal elections (p. 13)

(12) La Federation des francophones hors Quebec

- recommends that members to the House of the Federation be elected (pp. 59-60, 88)

(13) The Constitutional Committee of the Quebec Liberal Party

- recomends that the Federal Council be formed by delegations from the provinces acting on the instructions of their respective governments; the provincial premiers would be delegates or ex officio members of their province's delegation (pp. 52, 55)

- recomends that there be no delegates of the central government with a right to vote, but delegates would be present to explain the point of view of the federal government (pp. 52, 55)

(14) Senate Committee on Legal and Constitional Affairs (1980)

- recommends that all appointments continue to be made by the federal government, but every second appointment should be made from a list of names submitted by the government of the province (or territory) concerned and that consideration be given to filling a due portion of early vacancies from such lists. If a provincial government failed to submit a list in six months, the federal government would have to make the appointment itself (p. 36)

- recommend that where a government has no supporters in the House of Commons from a particular province, it should appoint to the Cabinet, with or without portfolio, a senator from that province (p. 41)

(15) Canada West Foundation (5)

- recommends that Senators be elected at the same time as national general elections, from provincial wide constituencies, but as a senatorial term would be measured in terms of the life of two parliaments, one-half of a province's representation would seeking election during each national election (pp. 111-115, 137)

- elections would be based on proportional representation using the transferable vote (pp. 115-117, 137)

- members of the elected Senate should be constitutionally barred from accepting appointment to the Cabinet of the Government of Canada (pp. 126-128, 138)

- a Senator who accepts appointment to the Cabinet should be required immediately to resign his seat in the Senate, but with the understanding that he not be required or expected to seek a seat in the House of Commons until the next federal general election (pp. 128-129, 138)

(16) Prince Edward Island, Senate

- recommends that Senators be elected in the same way as Members of the House of Commons (p. 9)

(17) Special Joint Committee of the Senate and House of Commons (1984)

- recommends that Senators be directly elected for a single 9 year term.

- recommends that each province be divided into as many constituencies as their are Senators; elections should proceed on the basis of single-member constituencies using the first-past-the-post electoral system (pp. 24-26)

- the majority concluded that Senators should not be eligible for cabinet office or for a position as parliamentary secretary (pp. 32-22)

(b) TENURE

(1) Special Joint Committee of the Senate and House of Commons (1972)
- recommends that the compulsory retirement age for all new Senators should be seventy years (pp. 33, 36)

- recommends that upon retirement Senators should retain the right to the title and precedence of Senators and the right to participate in the work of the Senate or of its Committees but not the right to vote or to receive the indemnity of Senators (pp. 33, 36)

(2) Canada West Foundation (1)
- recommends that members serve as part of a provincial delegation only so long as the provincial government wishes it (p. 16)

(3) The Constitutional Amendment Bill
- provides that members hold office until the next following selection of members of the House, S. 63(5).

(4) The Constitutional Committee of the Quebec Liberal Party
- as the delegations to the Federal Council represent their respective provincial governments tenure is based solely on the desire of the sitting provincial government (p. 52)

(5) Senate Committee On Legal And Constitutional Affairs (1980)
- recommends that Senators be appointed for a fixed term of ten years, renewable for further terms of five years upon the recommendation arrived at by secret ballot of a Senate Committee set up for that purpose; Senators would continue to retire at 75 (p. 36)

(6) Canada West Foundation (5)
- a Senatorial term is defined as the life of two parliaments (p. 113-114, 137)

(7) Prince Edward Island, Senate
- recommends that Senators have a ten-year term with regular rotations every five years (p. 7)

(8) Special Joint Committee of the Senate and House of Commons (1984)
- recommends that Senators be elected for a single 9 year term (pp. 26-28)

(c) MEMBERSHIP

(1) Special Joint Committee of the Senate and House of Commons (1972)
- recommends that the distribution of Senators should be as follows: Newfoundland 6, Prince Edward Island 4, Nova Scotia 10, New Brunswick 10, Quebec 24, Ontario 24, Manitoba 12, Saskatchewan 12, Alberta 12, British Columbia 12, the Yukon Territory 2, and the Northwest Territories 2: a total of 130

(2) Canada West Foundation (1)
- recommends that House of Provinces have 108 members representing 12 governments; based in part on population and in part on provincial status:
  (i) provinces having in excess of 5 million people would receive 24 seats
  (ii) provinces with 2 to 5 million would receive 12 seats
  (iii) those from a half-million to 2 million people would receive 6 seats each
  (iv) provinces with fewer than a half-million people would receive 3 seats (pp. 17-9)

(3) Canada West Foundation (2)
- delegates to the "Alternatives Canada" Conference did not agree on the number of members such a new forum or chamber should have, nor on whether there should be an equal number from each region or province (p. 6)

- the delegates agreed in majority that the appropriate size of a region was a province — be it large or small (p. 6)

(4) The Constitutional Amendment Bill
- provides that the House of the Federation shall consist of 118 members who shall be selected in accordance with the following provincial and territorial distribution of its members:
  (i) from the Atlantic provinces, 32 members, of whom 10 shall be selected from Nova Scotia, 10 from New Brunswick, 4 from Prince Edward Island, and 8 from Newfoundland (s. 62, p. 21)
  (ii) from Quebec, 24 members (p. 62, p. 22)
  (iii) from Ontario, 24 members (p. 62, p. 22)
  (iv) 10 from British Columbia, 8 from Saskatchewan and 10 from Alberta (p. 62, p. 22)

- provides for the selection of members to be based on the popular vote received by parties in the last federal election and in the case of those members selected provincially, the popular vote received by parties in the last provincial election, S. 64(2)

(5) Canada West Foundation (3)

- if all of the previously mentioned comments were operationalized, it recommends that:
  - (i) the number of Senators representing a particular political party would be proportionate to the popular vote received by senatorial candidates of that party
  - (ii) an equal or near equal number of Senators should be chosen from each province in such a way that the total number of members in the Senate not exceed 100 (p. 19)

(6) British Columbia's Proposals (Paper #3)

- recommends that there should be equal regional representation in the Senate from each of the five regions of Canada: Atlantic, Quebec, Ontario, Prairie, and Pacific (p. 33)

- recommends a relatively small Senate with 60 members (p. 19)

(7) Canadian Bar Association

- recommends that in determining representation in the Upper House, regional, linguistic and population factors should be accommodated (pp. 37, 46)

- such an accommodation can be made by giving considerably more members to Quebec and Ontario while ensuring regional balance be giving an overall majority to members from the rest of the country, and by giving somewhat greater weight to the Western and Northern regions than to the Atlantic region (pp. 37, 46)

(8) The Task Force on Canadian Unity

- recommends that the Council of the Federation should be composed of no more than 60 voting members, to be distributed among provinces roughly in accordance with their respective population up to a maximum of one-fifth of the council, and with weighting to favour provinces having less than 25 percent of the country's population (pp. 97, 128)

- any province which has at any time had 25 percent of the population (such as Quebec or Ontario) should be guaranteed one-fifth of the council seats in perpetuity (pp. 97, 128)

- such a formula might produce a representation of 12 seats each for Ontario and Quebec, 8 for British Columbia, 6 for Alberta, 2 for Prince Edward Island and 4 for each of the other provinces; upon becoming full-fledged provinces the Territories would qualify for seats also (p. 98)

(9) The Ontario Advisory Committee's Proposals (Report #1)

- recommends that representation should be a combination of geographic and population criteria

- an example of this would be a total membership of 30 or a multiple of 30 votes distributed as follows:
  Newfoundland 2, Nova Scotia 2, Prince Edward Island 1, New Brunswick 2, Quebec 6, Ontario 6, Manitoba 2, Saskatchewan 2, Alberta 3, British Columbia 4 (p. 8)

(10) Canada West Foundation (4)

- recommends in lecture that elected members of the second chamber would represent constituencies in regions with common properties (not provinces, but interprovincial or intraprovincial regions) (p. 13)

- membership would be based on equal representation (p.14)

(11) La Federation des francophones hors Quebec

- recommends that the House of the Provinces be a bi-national Upper House being composed of 53 Anglophones and 53 Francophones for a total of 106 members (pp. 57-58, 88)

- representation based upon two-fold principle:
  (i) the association of 2 equal partners and
  (ii) representation based upon the population of the provinces where members live (p. 57)

- five regions represented: Western provinces, Ontario, Quebec, Atlantic provinces, Yukon and Northwest Territories (p. 57-58)

(12) The Constitutional Committee of the Quebec Liberal Party

- as provincial delegations would vote "en bloc" according to instructions from their provincial governments, the committee recommends that there be a weighted vote factor on the basis of the relative size of each province, with Quebec's representation 25% of the total membership and with a reasonable degree of over-representation guaranteed to the smaller provinces.

- recommends that the Federal Council of 80 members could be composed as follows:

  Prince Edward Island 2, Newfoundland 3, New Brunswick and Nova Scotia 4 each, Saskatchewan and Manitoba 5 each, Alberta 8, British Columbia 9, and Quebec and Ontario 20 delegates each (pp. 52-53, 55)

(13) Canada West Foundation (5)

- recommends that there be equal representation for each province of from six to 10 Senators (p. 109-110, 137)

- recommends that the Yukon Territory and Northwest Territories be entitled to elect members to the Senate (p. 110-111, 137)

(14) Prince Edward Island, Senate

- is firm on the principle of equality-by-provinces, but is flexible on the number of Senators per province.

- recommends that each province be assigned 10 Senatorial positions and that the Northwest Territories and Yukon be assigned one each. Should either of the territories gain provincial status then the equality principle would apply (pp.7-8)

(15) The Special Joint Committee of the Senate and House (1984)

- recommends that the division of seats not be made on the basis of the current 4 Senate regions but by allocating seats to each province and territory.

- an equal number of seats for each province would not be appropriate (five provinces with as little as 13.4% of Canada's population would have a majority of seats if they had the support of the territories)

- recommends that most provinces have an equal number of seats with the exception that Ontario and Quebec would have more and the Prince Edward Island and the territories would have less; the four western provinces together would have as many seats as Ontario and Quebec jointly:
  (i) Ontario and Quebec - 24 seats each
  (ii) Newfoundland, Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta, British Columbia - 12 seats each
  (iii) Prince Edward Island - 6 seats
  (iv) Yukon - 2 seats and Northwest Territories - 4 seats
  (pp. 28-9)

B. JURISDICTION

(a) MATTERS WITH AN ABSOLUTE VETO

(1) Canada West Foundation (1)

- recommends that a special class of federal legislation be created comprising matters directly relating to language and culture, and that the special status of Quebec be recognized by giving the Quebec provincial deletation in the House of Provinces an absolute right of veto of federal legislation in those areas pertaining to Quebec (pp. 21-22)

(2) The Constitutional Amendment Bill

- provides that no appointment of a person to be the chairman, president or other chief executive officer of any judicial, quasi-judicial or administrative body or crown corporation shall have effect until such time as the appointment of that person has been affirmed by the House of the Federation, S. 70(1).

- provides that where a person has been nominated for appointment to the Supreme Court, the House of the Federation shall debate the matter of the nomination, and if at the conclusion of the debate the nomination is not affirmed by a majority of the members of the House of the Federation voting therein, the nomination shall not be proceeded with and the vacancy in the Supreme Court shall in that case be dealt with as though it had arisen at that time, S. 107(2)

- provides that both sections 70 and 107 require affirmation by a majority of the members of the House of the Federation, S. 107

(3) British Columbia's Proposals (Paper #3)

- recommends that the reformed Senate exercise an absolute veto over the following list of "Category A" matters:
  - (i) appointments to the Supreme Court (pp. 26, 34)
  - (ii) appointments to major federal crown agencies and federal commission (pp. 26, 34)
  - (iii) amendments to the Constitution in relation to some of those subject matters currently covered by s. 91(1) of the British North America Act (pp. 26, 34)
  - (iv) amendments to the Constitution in relation to all those subject matters not covered by sections 91(1) and 92(1) of the B.N.A. Act (pp. 27, 34)

(v) federal laws to be administered by the provinces such as Criminal Law matters relating to censorship, drug offences and gun control (pp. 28, 34)
(vi) use of Parliament's declaratory power (pp. 28, 34)
(vii) aproval of the use of the federal government's spending power in areas of provincial jurisdiction (pp. 29, 34)

- recommends that the Senator who is the Cabinet minister from each province would cast a bloc vote for all of the Senators from that province in relation to matters with an absolute veto (pp. 31, 34)

(4) The Ontario Advisory Committee's Proposals (Report #2)
- recommends that the House of Provinces would have an absolute veto over legislation which encroaches on the jurisdiction of the provincial governments and is therefore of direct provincial interest e.g., use of declaratory, spending and emergency powers, or legislation in areas of concurrent jurisdiction with provincial paramountcy (p. 72)

(5) The Constitutional Committee of the Quebec Liberal Party
- recommends that the Federal Council ratify:
  (i) The use of the federal emergency power;
  (ii) The use of federal spending power in fields of provincial jurisdiction;
  (iii) any intergovernmental delegation of legislative powers;
  (iv) treaties concluded by the federal government in fields of provincial jurisdicition;
  (v) international and interprovincial marketing programs of agricultural products;
  (vi) the appointment of judges of the Supreme Court and of its Chief Justice and their destitution when required;
  (vii) the appointments of Presidents and Chief Executive Officers of those federal and crown corporations of major importance (pp. 53, 55)

- recommends that the Council reflect Canada's duality by establishing a permanent "dualist committee", half of which will be made up of Francophone delegates, which will be convened whenever this dimension of the Canadian reality is likely to be affected by federal proposals; it would ratify: (i) federal proposals in linguistic matters; (ii) the appointment of Presidents and Chief Executive Officers of federal bodies of a cultural nature (pp. 54, 56)

(6) Senate Committee on Legal and Constitutional Affairs (1980)

- the absolute veto is not necessary; indeed the very fact of its absoluteness makes the Senate reluctant to reject any bill, however, bad (p. 39)

(7) Canada West Foundation (5)

- recommends that the elected Senate have an absolute power of veto not subject to any over-ride by the House of Commons on such matters as:
  - (i) the amendment of the constitution of Canada
  - (ii) the invocation of emergency power beyond a constitutionally stated maximum period,
  - (iii) the exercise the declaratory power
  - (iv) the exercise of the powers of reservation and disallowance (p. 137-138)

- the elected Senate should not have the power to ratify: international treaties or the appointment of ambassadors, the appointment of justices to the Supreme Court, the appointment of members to designated national boards, agencies and tribunals (p. 137-8)

(8) Prince Edward Island, Senate

- recommends that the original concept of the Senate have equal powers (except for money bills) with the House of Commons be maintained.

- notes that there would be little point to having a second chamber if deadlocks between the Houses did not occur occasionally (p. 9)

(9) Special Joint Committee of the Senate and House of Commons (1984)

- recommends that measures having linguistic significance be approved by a double-majority: that is, by a majority of francophone Senators and by a majority of all Senators - failed measures would not become law.

- recommends that order in council appointments to federal agencies, whose decisions have important regional implications, be subject to Senate ratification within a period of 30 sitting days; if the Senate did not reject an appointment within that period, it would be deemed to have ratified it (pp. 31-32)

(b) MATTERS WITH A SUSPENSIVE VETO

(1) Special Joint Committee of the Senate and House of Commons (1972)

- recommends that the present full veto power of the Senate over legislation should be reduced to a suspensive veto for six months according to the following formula: a Bill may become law without the consent of the Senate (1) if the House of Commons, having once passed it, passes it again no less than six months after it was rejected or finally amended by the Senate or, (2) if, within 6 months of third reading of a Bill by the House of Commons the Senate has not completed consideration of it, and the House of Commons again passes it at any time after the expiration of the 6 months, but any period when Parliament is prorogued or dissolved shall not be counted in computing the 6 months (pp. 33-34)

(2) Canada West Foundation (1)

recommends that legislation in the reconstituted Parliament of Canada be divided into two categories as follows:

(i) "ordinary" legislation, that is legislation coming clearly and completely within the area of federal jurisdiction, as under the enumerated headings of section 91 of the B.N.A. Act; the House of Provinces would only be able to delay this kind of legislation (perhaps for 30 days); included in the emergency power under section 91(1) of the B.N.A. Act (pp. 19-21)

(ii) legislation regarding conditional grants, or within areas of concurrent legislation; a joint session of the two Houses would be necessary to resolve conflict (pp. 19-21)

(3) The Constitutional Amendment Bill

- provides that where any Bill that has been passed by the House of Commons and presented to the House of the Federation:

(i) has been refused passage by the House of the Federation, and not less than 60 days nor more than 120 days have elapsed since such refusal....

(ii) has not been finally dealt with by the House of the Federation, and not less than 60 days nor more than 180 days have elapsed....

(iii) has been amended by the House of the Federation, and not less than 60 days nor more than 180 days have elapsed....

the Bill, in the form in which it was presented to the House of the Federation, but with such amendments made by the House of the Federation as may have been concurred in by the House of Commons in the case of a Bill to which paragraph (3) applies, may thereupon be presented to the Governor General of Canada or his or her deputy for assent, S. 67

- provides that no measure of special linguistic significance shall be adopted or passed by the House of the Federation except by a vote of both
  - (iv) a majority of its English-speaking members voting thereon, and
  - (v) a majority of its French-speaking members voting thereon, S. 69(2)

- provides furthermore that nothwithstanding anything in section 67, if a Bill that has been passed by the House of Commons and presented to the House of Federation is a measure of special linguistic significance it shall not be presented for assent pursuant to that section during that period, but if after the expiration of that period, that Bill or a Bill in the same form is again presented to the House of Commons and subsequently passed by that House by a vote of at least two-thirds of its members voting thereon, such Bill may thereupon be presented for assent pursuant to section 67 without further compliance with the reqirements of that section, S. 69(7)

(4) Canada West Foundation (3)

- if all of the previously mentioned comments were operationalized, Canada would revise its current Constitution such that the Senate would have a general suspensive veto on all federal legislation an federal provincial agreements with an override formula which requires repassage by the House (pp. 17, 19)

(5) British Columbia's Proposals (Paper #3)

- recommends that the Senate exercise a suspensive veto in respect of all other matters within the jurisdiction of the federal government (category B); this veto could be overriden by the Commons passing the same law again at its next session or after 3 months have elapsed, whichever comes first (pp. 30-31, 34)

- recommends that in relation to category B matters, all Senators would cast their vote on their own behalf as free agents and not under instruction from provincial governments (pp. 31-32, 34)

(6) Canadian Bar Association
- recommends that Upper House have the power to amend or reject any legislation subject to the overriding power of the House of Commons to re-enact it (pp. 37, 43)

(7) The Task Force on Canadian Unity
- recommends that the scope of the powers of the Council of the Federation should be the following:
  (i) legislation and treaties within exclusive federal jurisdiction should not require the approval of the Council
  (ii) proposed federal legislation and articles of teaties deemed to belong to the category of powers described as concurrent with federal paramountcy should be subject to a suspensive veto of short duration by the Council
  (iii) proposed federal legislation deemed to belong to the category of powers described as concurrent with provincial paramountcy should be subject to a suspensive veto of short duration by the Council, except in the case of measures implementing bilateral agreements between the federal government and one or more provincial governments (pp. 98, 128)

(8) The Ontario Advisory Committee's Proposals (Report #2)
- recommends that the House of the Provinces would have a 6-month veto over legislation which is classified as having substantial provincial interest, e.g. freight rates (p. 72)

(9) Canada West Foundation (4)
- recommends in lecture that the Senate have the power to turn back legislation from the House of Commons (p. 12)

(10) La Federation des francophones hors Quebec
- recommends that the House of the Federation shall have a right of suspensive veto in respect of any House of Commons' Bill; the veto shall be effective for 90 days (pp. 60, 88)

(11) Standing Senate Committee On Legal And Constitutional Affairs
- recommends a six months' suspensive veto (p. 39)

- recommends that subordinate legislation (regulations or other statutory instruments of the Governor General in Council) be affirmed by both House before they could come into effect; once disallowed by the Senate and the government would be barred from remaking any instrument so disallowed for a period of six months from its disallowance (pp. 39-40)

(12) Canada West Foundation (5)
- recommends that with regard to ordinary legislation a negative vote of the Senate can be over-ridden by repassage of the rejected legislation through the Commons by an unusual majority (pp. 124, 138)

(13) Special Joint Committee of the Senate and House of Commons (1984
- recommends that the Senate have a maximum veto of 120 sitting days, divided into equal periods of 60 days. Supply bills would not be subject to any delay; the mechanism would work as follows:
  (i) within the 60 sitting days following the transmission of a bill from the House, the Senate would make a final decision on it, either adopting it, rejecting it, or passing it with amendments; if the Senate had not made a final decision on a bill within the prescribed delay period, the bill could be presented directly to the Governor General for royal assent
  (ii) a bill adopted by the House of Commons and rejected by the Senate could not be presented to the Governor General for assent unless the House of Commons had adopted the bill a second time; that second adoption could not take place unless at least 60 sitting days had elapsed since the Senate rejected the bill
  (iii) if the Senate amended a bill passed by the House of Commons, the amendments would be transmitted to the Commons, which would have to accept or reject the amendments; if rejected, the bill could be presented to the Governor General for assent only after at least 60 sitting days had elapsed since transmission of the Senate amendments to the House; at the end of this period the House would again have to vote on the amendments and the bill
  (iv) in computing the 60 day periods, only days when either House is sitting would be counted (pp. 30-31)

C. GENERAL POWERS WITH NO VETO DEFINED

(1) Special Joint Committee of the Senate and House of Commons (1972)

- recommends that the investigative role of the Senate, which has gained more importance in recent years, should be continued and expanded at the initiative of the Senate itself, and the government should also make more use of the Senate in this way (pp. 33, 34)

- recommends that the government should be entitled to introduce in the Senate all Bills, including money Bills but excluding appropriation Bills, before their approval by the House of Commons, provided that, in the case of money Bills, they should be introduced by the Leader of the Government in the Senate on behalf of the government (pp. 33, 34)

(2) Canada West Foundation

- delegates to the "Alternatives Canada" Conference indicated quite strongly that the proposed new federal forum or chamber, representing the regions, should play a key role in approving appointments to the Supreme Court (p. 7)

(3) The Constitutional Amendment Bill

- provides that Bills proposed to Parliament, other than Bills for appropriating any part of the public revenge or for imposing any tax or impost may originate in the House of the Federation equally as in the House of Commons, S. 66

(4) Canada West Foundation (3)

- if all of the previously mentioned comments were operationalized, Canada would revise its current Senate such that it would have the following powers:
  - (i) ratification of treaties (pp. 17, 19)
  - (ii) advice and consent on appointments to all federal regulatory agencies and crown corporation (p. 18, 19)
  - (iii) power to initiate non-money Bills (pp. 18, 19)
  - (iv) the ability to set its own agenda and discipline its own members (pp. 18, 19)

(5) Canadian Bar Association

- recommends that the principal function of the Upper House should be to review federal legislation having significant regional impact and in particular it should have the following powers:
  - (i) shared-cost programs with the provinces would require a two-thirds majority in the Upper House (pp. 38, 44)

(ii) measures to regulate intraprovincial trade declared to be essential for the management of national or international trade would require a two-thirds majority in the Upper House (pp. 38, 44)

(iii) general economic objectives binding on the provinces would require the assent of a two-thirds majority of the Upper House and be subject to review yearly (pp. 38, 44)

(iv) a declaration that a work is for the general advantage of Canada would require a two-thirds majority of the Upper House unless the province concerned agreed (pp. 38, 44)

(v) support of a majority of the Upper House would be required for use of the emergency power in matters other than war, invasion or insurrection (pp. 30, 44)

(vi) generally the Upper House should have a role in conciliating federal and provncial policies and administration and could in effect be a continuing federal-provincial conference (pp. 38, 44)

(vii) the consent of the Upper House would be required for the ratification of treaties respecting matters predominantly within provincial legislative authority and multilateral trade treaties (pp. 38, 44)

(viii) the Upper House should consent to the appointment of Supreme Court of Canada judges by means of a judiciary committee working in camera (pp. 38, 44)

(6) Progressive Conservative Party's Proposals (Discussion Paper #3)

- suggests that subject to further study and extensive discussion, the House of the Provinces would exercise general oversight of national activities in matters affecting provincial and regional interests (p. 8)

- national legislation in these areas would receive its first exposure and discussion there (p. 8)

(i) it would scrutinize agreements arrived at between governments before they came into effect, thus providing an opportunity for the House of Commons to examine them (pp. 8-9)

(ii) the House of Provinces would examine any proposed amendments to the equalization formula (p. 9)

(iii) it would have to approve any use by the federal government of its powers under section 92(10) of the B.N.A. Act which allows for the assertion of federal responsibility for any work or projects within a province (p. 9)

(iv) the House of the Provinces would approve nominations to the Supreme Court and to certain federal agencies (p. 9)

(v) it would agree on the text of references submitted by the federal government to the Supreme Court, seeking its opinion in matters in constitutional dispute (p. 9)

(vi) it would review constitutional decisions of the Court in order to assess their implications for the federal system (p. 9)

(7) The Task Force on Canadian Unity

- recommends that the scope of the powers of the Council should be the following:

  (i) the ratification of treaties, or parts of treaties, which deal with matters within provincial jurisdiction should require the approval of a majority of the provinces in the council, on the understanding that legislative measures implementing such treaties are to remain within provincial jurisdiction (pp. 98, 128)

  (ii) federal initiatives in areas of provincial jurisdiction that are based on the federal spending power, whether they are to be cost-shared or financed fully from federal funds (with the exception of expenditures related to equalization) should require a two-thirds majority in the Council (pp. 98, 128)

  (iii) a proclamation of a state of emergency, in either peacetime or wartime circumstances, should require, in addition to confirmation by the House of Commons, confirmation by the Council by at least a two-thirds majority (pp. 98, 129)

- recommends that the Council should be used as a forum for the discussion of general proposals and broad orientation arising from conferences of the First Ministers on the economy and any other proposals the conference of First Ministers may so designate, or any other matters of concern to the members of the Council itself (pp. 98, 129)

- recommends that federal appointments to the Supreme Court, to major regulatory agencies such as the CRTC, CTC, and the NEB, and to central institutions such as the Bank of Canada and the CBC, should require the approval of the appropriate committee of the Council (pp. 98, 129)

(8) Ontario Advisory Committee's Proposals (Report #1 and Report #2)

- recommends that the House of Provinces would have no veto over legislation which is classified as having no substantial provincial interest, e.g. classifications in the federal civil service (pp. 71-72 of Report #2)

- recommends that the specific powers of the House be the following:

(i) simultaneous introduction of legislation into both Houses (p. 9, Report #1)
(ii) no power to initiate legislation (p. 9, Report #1)
(iii) power to approve appointments of judges to the Supreme Court of Canada (p. 9, Report #1)
(iv) power to approve appointments to federal regulatory bodies such as the NEB, CTC, CRTC and the Bank of Canada (p. 9, Report #1)
(v) on the other hand, nominations to federal advisory and operating agencies such as the CBC, the CNR and the Economic Council of Canada would not be subject to the approval of the House of Provinces (p. 9, Report #1)

(9) Canada West Foundation (4)
- recommends in lecture that the new Senate should have similar powers to those given to (but not often used by) the present Senate, that is:
  (i) the power to introduce legislation but not money bills, and
  (ii) the responsibility to scrutinize the wording of all legislation enamating from the House of Commons (p. 12)
- recommends in addition that the new Senate should have an advice and consent role over senior government appointments and appointments to national regulatory agencies (p. 12)

(10) La Federation des francophones hors Quebec
- recommends that the specific powers of the House of the Federation should be as follows:
  (i) the House shall have the power to introduce any bill other than one for the appropriation of any part of the public revenue (pp. 60, 88)
  (ii) the House shall have the power to elect its own chairman at each session (pp. 61, 88)
  (iii) the House shall appoint:
    (1) the judges of the Supreme Court of Canada
    (2) the commissioners of the Bi-national Cultural Commission (pp. 61, 88)
  (iv) the House shall ratify the appointment of:
    (1) all senior government officials (deputy ministers and assistant deputy ministers)
    (2) all heads and directors of government agencies and state corporations
    (3) all Canadian ambassadors to foreign countries
    (4) all judges appointed by the federal government (pp. 61, 88)

(v) the House shall ratify all treaties between Canada and other governments or international agencies (pp. 61, 89)
(vi) the House shall ratify all cost-sharing programs between the federal government and the provinces (pp. 61, 89)
(vii) the House shall ratify any declaration that a work is for the general advantage of Canada (pp. 61, 98)
(viii) the House shall ratify any proclamation of a real or apprehended state of war or insurrection (pp. 61, 89)
(ix) the House shall have a power of inquiry and its reports shall be tabled for discussion (pp. 61, 89)

(11) The Constitutional Committee of the Quebec Liberal Party
- recommends that the Federal Council give its advice on the following questions:
  (i) the monetary, budgetary and fiscal policies of the federal government;
  (ii) mechanisms and operating formulas used for equalization; and
  (iii) in general, on all matters having, in its opinion, substantial regional or provincial impact (p. 55)

- recommends that the Council's "dualist committee" give its advice on any cultural issues which are of federal jurisdiction and will ensure that the federal public service reflects Canada's dualism at all levels (p. 54, 56)

(12) Standing Senate Committee on Legal And Constitutional Affairs
- recommends that the reformed Senate establish new Standing Committees on: Regional Affairs, Official Languages and Human Rights to emphasize its commitment to those areas (pp. 41-42)

(13) Canada West Foundation (5)
- recommends that the elected Senate, be formally recognized as an integral part of the formation of national policy (pp. 37-38)

D. CLASSIFICATION OF LEGISLATION

(1) Canada West Foundation (1)
- recommends that the final authority on the question of assigning legislation to a specific category be the Constitutional Court of the Supreme Court of Canada (p. 22)

(2) The Task Force on Canadian Unity
- recommends that to determine the classification of a bill or treaty and hence the powers that the Council may exercise, a permanent committee should be created and composed of the Speakers and some members from both the House of Commons and the Council (pp. 98, 129)

(3) The Ontario Advisory Committee's Proposals (Report #2)
- recommends that classification of legislation would be determined by a joint House of Commons - House of Provinces rules committee (p. 72)

- recommends that in case of disagreement, one possibility would be a reference to the Supreme Court for decision; another possibility would be to give the deciding vote to an agreed-on chairman possibly rotating between the Speakers of the two Houses (p. 72)

(4) Standing Senate Committee on Legal and Constitutional Affairs
- recommends that the current procedure for conferences between the two Houses should be broadened and become part of the normal way of dealing with differences on bills and be used to establish cooperation between committees of the two Houses considering the same bill (p. 42)

(5) Canada West Foundation (5)
- recommends the creation of a standing joint reconciliation committee to settle disagreements between the Senate and the House of Commons by the formulation of mutually acceptable compromises (p. 138)

VIII. APPENDICES

RESOLUTION

TO ESTABLISH A SELECT SPECIAL COMMITTEE

TO EXAMINE THE ROLE OF AN UPPER HOUSE

IN THE CANADIAN FEDERAL SYSTEM

November 23, 1983

Be it resolved that:

(1) A select special committee of this Assembly be established to examine the appropriate role, functions and structures of an Upper House in the Canadian federal system. Such a review shall include the examination of alternative methods of selecting members, geographical representation and the legislative powers and responsibilities of such a body. In carrying out its review, the Committee shall examine the operation of the present Canadian Senate and the structures and functions of other Upper Houses;

(2) The Committee shall consist of the following members:

D. Anderson, Chairman
S. Embury - Vice-Chairman
H. Alger
D. Carter
R. Moore
C. Paproski
N. Pengelly
R. Speaker

(3) Members of the Committee shall be paid in accordance with S.43(1) of the Legislative Assembly Act;

(4) Reasonable disbursement by the Committee for staff assistance, equipment and supplies, public information needs, rent, travel, and other expenditures necessary for the effective conduct of its responsibilities shall be paid, subject to the approval of the chairman;

(5) In carrying out its responsibilities, the Committee may, with the concurrence of the head of the department, utilize the services of members of the public service employed in that department or of the staff employed by the Assembly;

(6) The Committee may, without leave of the Assembly, sit during a period when the Assembly is adjourned;

(7) When its work has been completed, the Committee shall report to the Assembly if it is then sitting, and may release its report during a period when the Assembly is adjourned by depositing a copy with the Clerk and forwarding a copy to each member of the Assembly.

B. ADVERTISEMENT INVITING INQUIRIES

AND/OR BRIEFS ON SENATE REFORM

SENATE REFORM

What do you think?

Albertans will have an opportunity to make their views known at Public Hearings to be held this summer by the Legislative Committee on Upper House Reform.

The Committee wants to hear your views. The goal is to determine what responsibilities and method of representation Albertans want in the Canadian Senate. Your ideas can be presented for Committee consideration by way of oral presentations, briefs or even letters.

Information kits on Senate Reform are available. Mail the form below to the address indicated, or ask your telephone operator for a free RITE line to call 427-2580.

LEGISLATIVE ASSEMBLY OF ALBERTA

Please forward a free information kit on Senate Reform to:

Name: _____

Address _____

_____ Code _____

MAIL TO:
Alberta Legislative Committee on Upper House Reform
Room 313, Legislature Bldg.
Edmonton, Alberta
T5K 2B6

Dennis Anderson, MLA
Chairman

Sheila Embury, MLA
Vice-Chairman

C. NEWSPAPER WHERE AN ADVERTISEMENT INVITING INQUIRIES AND BRIEFS APPEARED

GRANDE PRAIRIE AREA (Northern Alberta)

Grande Prairie Daily Herald Tribune
Beaverlodge Advertiser
Fairview Post
Rycroft Central Peace Signal
Valleyview Valley Views
Grande Prairie Rural Route

PEACE RIVER AREA (Northern Alberta)

Peace River Record Gazette
Fahler Smoky River Express
Fort Vermilion Northern Pioneer
Grimshaw Mile Zero News
High Level Echo
High Prairie South Peace News
Manning Banner Post
Slave Lake Lakeside Leader

FORT McMURRAY AREA (Northern Alberta)

Fort McMurray Today
Fort McMurray Express

EDSON AREA (West of Edmonton)

Edson Leader
Barrhead Leader
Drayton Valley Western Review
Grande Cache Mountaineer
Hinton Parklander
Jasper Booster
Mayerthorpe Freelancer
Swan Hills Grizzley Gazette
Whitecourt Star
Wildwood Grand Trunk Popular Press

ST. PAUL AREA (N.E. of Edmonton)

St. Paul Journal
Athabasca Echo

ST. PAUL AREA (cont'd)

Bonnyville Nouvelle
Cold Lake Courier
Grande Centre Cold Lake Sun
Lac LaBiche Post
Smoky Lake Signal
Two Hills and County Times
Vegreville Observer
Vermilion Standard

CAMROSE AREA (S.E. of Edmonton)

Lloydminster Daily Times
Camrose Canadian
Bashaw Star
Lloydminster Meridian Booster
Mannville Reflections
Provost News
Sedgewick Community Press
Tofield Mercury
Viking Review
Wainwright Star Chronicle
Westlock News
Wetaskiwin Times

RED DEER AREA (S. of Edmonton)

Red Deer Advocate
Red Deer Central Alberta Parkland News
Bowden Eye Opener
Castor Advance
Consort Enterprise
Coronation Review
Delburne & District Journal
Eckville Examiner
Innisfail Province
Lacombe Globe
Olds Gazette
Ponoka Herald
Rimbey Record
Rocky Mountain House Mountaineer
Stettler Independent
Sundrie Roundup
Sylvan Lake News
Trochu Community Voice

CALGARY AREA (S. of Edmonton)

Calgary Herald
Calgary Sun
Airdrie Echo
Banff Crag & Canyon
Canmore Leader
Carstairs Community Press
Cochrane Rocky View Times
Didsbury Pioneer & Mountain View News
High River Times
Irricana Rocky View/Five Village Weekly
Nanton News
Okotoks Western Wheel
Strathmore Standard
Turner Valley Eagle View Post

DRUMHELLER AREA (N.E. of Calgary)

Brooks Bulletin
Drumheller Mail
Bassano Times
Carbon Village Press
Hanna Herald
Oyen Echo
Three Hills Capital

LETHBRIDGE AREA (S. of Calgary)

Lethbridge Herald
Cardston Chronicle
Claresholm Local Press
Coaldale Sunny South News
Fort McLeod Gazette
Pincher Creek Echo
Raymond Review
Standoff Kanai News
Taber Times
Vulcan Advocate
Vauxhall Advance

MEDICINE HAT AREA

Medicine Hat News
Bow Island Commentator

EDMONTON AREA

Edmonton Journal
Edmonton Sun
St. Albert Gazette
Nisku News
Lamont Elk Island Triangle
Morinville Mirror
Leduc Representative
Onoway Tribune
Sherwood Park News
Spruce Grove Examiner
Stony Plain Reporter
Red Water Thorild News
Fort Saskatchewan Record

OTHER PUBLICATIONS

Alberta Report

D. SAMPLE OF AN ADVERTISEMENT

FOR THE PUBLIC HEARINGS

SENATE REFORM

PUBLIC HEARINGS

The goal is to determine what responsibilities and method of representation Albertans want in Canada's Senate.

All individuals and groups who have requested to meet with the Legislative Committee on Upper House Reform will be heard at these Hearings. If time permits, those who have not previously contacted the Committee may also make presentations. Based on these Hearings, the Committee will then make their recommendations to the Alberta Legislative Assembly.

For information, ask your telephone operator for a free RITE line to call 427-2580.

Edmonton

Provincial Museum Auditorium

12845-102 Avenue

August 8

1:30 p.m. to 4:30 p.m.

6:00 p.m. to 8:00 p.m.

August 9

10:00 a.m. to 12 noon

1:00 p.m. to 4:30 p.m.

LEGISLATIVE ASSEMBLY OF ALBERTA

Alberta Legislative Committee
on Upper House Reform
Room 313, Legislature Bldg.
Edmonton, Alberta
T5K 2B6

Dennis Anderson, MLA
Chairman

Sheila Embury, MLA
Vice-Chairman

ALL WELCOME

E. NEWSPAPERS WHERE AD REGARDING THE PUBLIC HEARINGS APPEARED

MEDICINE HAT

Medicine Hat News
Bow Island 40 Mile Commentator

LETHBRIDGE

Lethbridge Herald
Raymond Review
Cardston Chronicle
Ft. Macleod Gazette
Coaldale Sunny South News
Vulcan Advocate
Taber Times
Claresholm Local Press
Pincher Creek Echo

CALGARY

Calgary Herald
Calgary Sun
Airdrie Rocky View Times
Cochrane Times
High River Times
Irricana Rocky View/Five Village Weekly
Okotoks, The Western Wheel
Strathmore Standard
Turner Valley Eagleview Post
Crossfield Chronicle
Carstairs Community Press
Nanton News
Sundre Round-Up

RED DEER

Red Deer Advocate
Innisfail Province
Three Hills
Stettler Independent
Bashaw Star
Rimbey Record
Sylvan Lake News
Olds Gazette
Trochu Community Voice
Bowden Eye Opener
Lacombe Globe
Ponoka Herald

EDMONTON

Edmonton Journal
Edmonton Sun
Leduc Representative
Tofield Mercury
Sherwood Park News
Ft. Saskatchewan Record
St. Albert Sturgeon Gazette
Stony Plain Reporter
Redwater/Thorhild News
Wetaskiwin Times
Morinville Mirror
Westlock News
Spruce Grove Examiner

GRANDE PRAIRIE

Grande Prairie Daily Herald Tribune
Grande Prairie Rural Route
Beaverlodge Advertiser
Rycroft Central Peace Signal
Valleyview Valley News

F. INDIVIDUALS AND ORGANIZATIONS WHO SUBMITTED BRIEFS

The Committee received written material (articles, briefs, reports or letters) from the following groups and individuals:

Alberta, Calgary and Edmonton Chambers of Commerce
Alberta Provincial Committee for an Elected Senate
Alberta Union of Provincial Employees
Alix and District Chamber of Commerce
Anderson, His Worship Mayor A.C. - Lethbridge
Baba, Mr. Ron
Bailey, Mrs. Beryl
Bauman, Dr. Joseph A.
Beauchamp, Mr. Leonard
Brown, Mr. Bert
Calgary Buffalo Progressive Conservative Association
Calgary McKnight Progressive Conservative Association
Canada West Foundation
Canadian Organization of Small Business
Capon, Mr. Paul
Chapman, Mr. R.W.
Cockle, Mr. E.H
Communist Party of Canada
Conrad, Mr. Keith
Conway-Brown, Mr. George
Delwo, Mr. Ted
Dubuc, Mrs. Bernice
Elzinga, Mr. Peter
Federal Progressive Conservative Women's Caucus of Calgary
Filipowich, Ms. Angie
Freedom & Free Enterprise Foundation of Canada
French-Canadian Association of Alberta
Galemzoski, Ms. Nora
Gallagher, Mr. J.P.
Geuder, Mrs. Freda S.
Godin, Mrs. Loren
Gray, Mr. J.K.
Grieves, Mr. Tim
Hainsworth, Mr. J.L.
Hargrave, Mr. Bert
Hasan, Mr. Syed
Hawkes, Mr. Jim
Hills, Ms. June
Hirji, Mr. H.
Hodgins, Ms. Barbara
Holtslander, Mr. Dale
Hughes, Mr. Ken
Hulleman, Mr. Harlan C.
Hurd, Mr. Larry D.
Johnston, Mr. & Mrs. William
Jones, Mr. R.M.P.

Kelly, Mr. & Mrs. William
Kerr, Mr. Robert
Kott, Mr. R.E.
Lambert, Mr. Marcel
Mabbott, Mr. Randy
MacKinnon, Prof. Frank
Mazza, Mr. Brian
McAlpine, Mr. Scott
McArthur, Mr. Thomas
McBride, Mr. Roy F.
McNeil, Mrs. Evelyn
Medicine Hat Provincial Progressive Conservative Association
Meyer, Mr. Jack
Newberry, Mr. J.F.
New Democratic Party - Federal
Nightingale, Mr. Fred
Nimmo, Mrs. Joan
Parsons, Robert V.
Paul, Mr. John E.B.D.
Plaizier, Mrs. Marie
Pocock, Mr. Norman A.
Pontaculto, Mr. Kenneth
Riley, Mr. Terry
Ronaghan, Mr. A.
Rose, Mr. Alex K.H.
Ross, Mr. Philip A.
Schori, Mr. A.
Shenette, Mrs. Deborah
Sherwood Park Progressive Conservative Riding Association
Smith, Mr. Barney
Smith, Mr. Jerry
Snow, Mr. George
Spilde, Mr. Lewis D.
Stein, Mrs. Carol
Stein, Mr. Patrick
Stewart, Mr. & Mrs. Roy
Sundal, Mrs. Gladys
Taber Warner Progressive Conservative Association
Taylor, Mr. Gordon
Taylor, Mrs. Kathleen
Thacker, Mr. Blain
Thomson, Mr. John
Todd, Mr. R.C.
Towers, Mr. Gordon
Town of Sexsmith
Transalta Utilities Corporation
Western Canada Concept - Calgary
Western Canada Concept - Edmonton
Wiley, Mrs. E.
Williams, Mr. Glen
Woodbury, Rev. Clair
Yurko, Mr. William J.

G. INDIVIDUALS AND ORGANIZATIONS

WHO APPEARED AT THE PUBLIC HEARINGS

The Committee met with the following groups and individuals during the public hearings held in Medicine Hat, Lethbridge, Calgary, Red Deer, Edmonton and Grande Prairie, Alberta.

Alberta, Calgary and Edmonton Chambers of Commerce
Alberta Provincial Committee for an Elected Senate
Alix Chamber of Commerce
Anderson, His Worship Mayor A.C. - Lethbridge
Baba, Mr. Ron
Beauchamp, Mr. Leonard
Canada West Foundation
Conway-Brown, Mr. George
Galemzoski, Ms. Nora
Calgary Buffalo Constituency Association
Calgary McKnight Progressive Conservative Association
Canadian Organization of Small Business
Chapman, Mr. R.W.
Cockle, Mr. E.H.
Communist Party of Canada
Conrad, Mr. Keith
Freedom & Free Enterprise Foundation of Canada
Gallagher, Mr. Jack P.
Gray, Mr. J.K.
Grieves, Mr. Tim
Hargrave, Mr. Bert
Hirji, Mr. H.
Hodgins, Ms. Barbara
Holtslander, Mr. Dale
Hughes, Mr. Ken
Hulleman, Mr. Harlan
Hurd, Mr. Larry
Jones, Mr. R.M.P.
Kelly, Mr. & Mrs. William
Mabbott, Mr. R.
Mazza, Mr. Brian
McAlpine, Mr. Scott
McArthur, Mr. Thomas
McBride, Mr. Roy F.
McNeil, Mrs. Evelyn
Meyer, Mr. Jack
New Democratic Party - Federal
Nightingale, Mr. Fred
Nimmo, Mrs. Joan
Parsons, Mr. Robert V.

Paul, Mr. John E.B.D.
Plaizier, Ms. Marie
Pocock, Mr. Norman A.
Rose, Mr. Alex
Riley, Mr. Terry
Ronaghan, Mr. Allen
Schori, Mr. A.
Shenette, Mrs. Debra
Sherwood Park Progressive Conservative Riding Association
Smith, Mr. Jerry
Stein, Mrs. Carol
Stein, Mr. Patrick
Sundal, Mrs. Gladys
Taber-Warner Progressive Conservative Association
Taylor, Mr. Gordon
Todd, Mr. R.C. Mr. Blaine A.
Town of Sexsmith
Western Canada Concept - Calgary
Western Canada Concept - Edmonton
Yurko, Mr. Bill

H. SUMMARY OF BRIEFS SUBMITTED AND PRESENTATIONS

to the

ALBERTA SELECT SPECIAL COMMITTEE ON SENATE REFORM

NATURE OF PROPOSAL	NO. SUPPORTING THE PROPOSAL
1) "Triple E" (Equal, Elected and Effective)	52.0
2) Direct Election (Proportionately Weighted Representation)	17.5*
3) Total Supporting Direct Election (1 and 2 above)	69.5
4) Provincial Appointment	9.0
5) Overall Parliamentary Reform	5.0
6) Abolition	3.0
7) Status Quo	2.0
8) Other	11.5

NOTE: Not all briefs could be clearly characterized and some represented more people than others, therefore these figures are to be viewed as general indicators only.

TOTAL NUMBER OF BRIEFS SUBMITTED AND PRESENTATIONS TO THE COMMITTEE - 92

I. FEDERAL/PROVINCIAL AND INTERNATIONAL MEETINGS

The Committee met with following individuals throughout Canada:

OTTAWA, ONTARIO

Members, Special Joint Committee on Senate Reform

Hon. Sen. William Doody
Mr. Maurice Harquail, M.P.
Hon. Sen. Fernand E. Leblanc
Hon. Sen. Jean Le Moyne
Hon. Sen. Philip Derek Lewis
Hon. Sen. Gildas Molgat
Mr. Marcel Roy, M.P.

Members, Macdonald Royal Commission on the Economic Union and Development Propsects for Canada

Mr. Clarence Barber
Mr. Laurent Picard
Mr. Daryl Kenneth Seaman
Mr. Bill Hamilton
Mr. Michael Robert
Dr. Catherine Wallace

Others

Mr. Harvie Andre, M.P.
Hon. Senator Martha P. Bielish
Hon. Senator Sid Buckwold
The Right Hon. Joe Clark
Mr. Albert Cooper, M.P.
Mrs. Eva Cote, MP
Mr. Lloyd R. Crouse, MP
Mr. Louis Desmarais, MP
Mr. Peter Elzinga, MP
Hon. Senator Jacques Flynn
Dr. Eugene Forsey
Dr. Maurice Foster, MP
Hon. Lloyd Francis, MP, Speaker, House of Commons
Hon. Senator Royce Frith
Mr. Herbert T. Hargrave, MP
Mr. James F. Hawkes, M.P.
Mr. Ron Huntington, MP
Hon. Mark MacGuigan, PC, MP, Attorney General
Mr. Arnold J. Malone, MP
Mr. Donald F. Mazankowski, MP
Mr. Brian Mulroney, Leader of the Opposition
Hon. Senator Bud Olson
Hon. Senator Maurice Riel, QC, Speaker of the Senate
Senator Duff Roblin
Mr. John W. Schields, MP
Mr. Stanley K. Shellenberger, MP

OTTAWA (cont'd)

Mr. Gordon Towers, MP
His Excellency Wolfgang Behrends, Ambassador of the Federal Republic of West Germany
The Lord Moran, K.C.M.G., British High Commissioner
His Excellency Rowan Osborn, Ambassador to the Australian High Commission
Mr. John O. Rouse, Deputy Chief of Mission, United States Embassy

VICTORIA, BRITISH COLUMBIA

Mr. Elwood Beech, M.L.A.
Mr. Jack Davis, M.L.A.
Hon. G. Russell Fraser, M.L.A., Minister of Transportation and Highways
Hon. Garde B. Gardom, Q.C., B.A., Minister of Intergovernmental Relations
Mr. Alexander, Macdonald, Q.C., M.L.A.
Hon. Patrick L. McGeer, M.D., Ph.D., B.A., M.L.A., Minister of Universities, Sciences and Communication
Mr. Doug Mowat, M.L.A.
Hon. James Nielson, M.L.A., Minister of Health
Mr. John Parks, M.L.A.
Mr. Angus Ree, M.L.A.
Mr. John Reynolds, M.L.A.
Mr. Terry Segarty, M.L.A.
Hon. Brian Smith, M.L.A., Attorney General
Mr. Mel Smith, Deputy Minister of Constitutional Affairs
Mr. William B. Strachan, M.L.A.

REGINA, SASKATCHEWAN

Mr. Harry Baker, M.L.A.
Mrs. Gay Caswell, M.L.A.
Hon. Grant Devine, Premier
Hon. Rick Folk, M.L.A., Minister of Parks and Recreation
Mr. Walter Johnson, M.L.A.
Mr. Murray Koskie, M.L.A.
Hon. J. Gary Lane, M.L.A., Q.C., Attorney General
Mr. Norman Lusney, M.L.A.
Mr. Robert Myers, M.L.A.
Mr. Keith Parker, M.L.A.
Mr. William Sveinson, M.L.A.
Hon. Herb Swan, M.L.A., Speaker
Mr. Kim Young, M.L.A.
Miss Joanne Zazelenchuk, M.L.A.

WINNIPEG, MANITOBA

Hon. Andy Anstett, M.L.A., Minister of Municipal Affairs and Government House Leader
Mr. David Robert Blake, M.L.A.
Mr. Peter A. Brown, M.L.A.
Mr. Henry N. Carroll, M.L.A.
Mr. Gary Filmon, M.L.A., Leader of the Opposition
Mr. Harry Edward Graham, M.L.A.
Mrs. Geraldine R. Hammond, M.L.A.
Mr. Lloyd G. Hyde, M.L.A.
Mr. Abe Kovnats, M.L.A.
Very Rev. Donald M. Malinowski, M.L.A.
Mr. James W. McKenzie, M.L.A.
Mr. Rurik Nordman, M.L.A.
Mr. Alan B. Ransom, M.L.A.
Hon. D.J. Walding, M.L.A., Speaker

TORONTO, ONTARIO

Mr. Mike Breaugh, M.P.P.
Mr. Jim Breithaupt, M.P.P.
Mr. Don Cousens, M.P.P.
Hon. William G. Davis, Premier
Mr. Jack Johnston, M.P.P.
Mr. Morley Kells, M.P.P.
Hon. Nicholas Leluk, M.P.P., Minister of Correctional Services
Mr. Roderick Lewis, Q.C., Clerk of the Assembly
Mr. Donald MacDonald, former M.P.P.
Hon. Roy McMurtry, M.P.P., Attorney General
Mr. David Peterson, M.P.P., Leader of the Liberal Party
Mr. Gary Posen, Deputy Minister, Intergovernmental Affairs
Mr. James Renwick, M.P.P.
Mr. James Taylor, M.P.P.
Hon. Thomas L. Wells, M.P.P., Government House Leader and Minister of Intergovernmental Affairs
Mr. John Williams, M.P.P.

QUEBEC, QUEBEC

Mr. Harry Blank, M.N.A.
Mr. Robert Bourassa, Leader of the Liberal Party
Prof. Leon Dion, Laval University
Mr. Rejean Doyon, M.N.A.
Mr. Roland Dussault, M.N.A.
Mr. Michel Gratton, M.N.A.
Hon. Pierre Marc Johnson, M.N.A., Minister Responsible for Canadian Affairs
Mr. Marcel Lafreniere, M.N.A.
Mr. Michel Leduc, M.N.A.

QUEBEC (cont'd)

Mr. Marcel Leger, M.N.A.
Mr. Herbert Marx, M.N.A.
Mr. David Payne, M.N.A.
Prof. R. Pelletier, Laval University
Mr. Denis Perron, M.N.A.
Hon. Real Rancourt, M.N.A., Deputy Speaker
Mr. Luc Tremblay, M.N.A.
Prof. Michel Tremblay, Laval University
Mr. Denis Vaugeois, M.N.A.

NEW BRUNSWICK

Hon. E.G. Allen, M.L.A., Minister of Supplies and Services
Mr. Barry Athey, Deputy Attorney General
Hon. J.B.M. Baxter, Q.C., M.L.A., Minister of Finance
Mr. David Clark, M.L.A.
Mr. Keith Dow, M.L.A.
Mr. Bev Harrison, M.L.A.
Mr. Eric J. Kipping, M.L.A.
Mr. Hazen Myers, M.L.A.
Mr. H.B. Smith, M.L.A.
Hon. James N. Tucker, M.L.A., Speaker

NOVA SCOTIA

Mr. Gordon F. Coles, Deputy Attorney General
Hon. Arthur R. Donahoe, M.H.A., Speaker
Hon. R.C. Giffin, Q.C., M.H.A., Attorney General
Mr. Donald A. MacLeod, M.H.A.
Mr. Don McInnes, M.H.A.
Hon. Edmund Morris, M.H.A., Minister of Social Services
Dr. R.C. Stewart, M.H.A.
Mr. Edward W. Twohig, M.H.A.

PRINCE EDWARD ISLAND

Mr. Horace B. Carver, Q.C., M.L.A.
Mr. Daniel Compton, M.L.A.
Mr. Joseph Ghiz, M.L.A., Leader of the Opposition
Hon. Gordon Lank, M.L.A., Minister of Transportation and Public Works
Mr. Wilbur MacDonald, M.L.A.
Mr. Wilfred MacDonald, M.L.A.

NEWFOUUNDLAND

Hon. Dr. J.F. Collins, M.H.A., Minister of Finance
Hon. William Marshall, M.H.A., Minister Responsible for Energy
Hon. G.R. Ottenheimer, Q.C., M.H.A., Attorney General
Mr. Steven Neary, M.H.A., Leader of the Opposition

NORTHWEST TERRITORIES

Mr. James Arreak, former M.L.A.
Mr. Mike Ballantyne, M.L.A.
Hon. Nellie Cournoyea, M.L.A., Minister of Renewable Resources
Mr. Sam Gargan, M.L.A.
Mrs. Eliza Lawrence, M.L.A.
Mr. Robert MacQuarrie, M.L.A.
Hon. Bruce McLaughlin, M.L.A., Minister of Health and Welfare
Hon. Richard Nerysoo, M.L.A., Government Leader and Minister of Intergovernmental Affairs
Mr. John Parker, Commissioner
Hon. Dennis Patterson, M.L.A., Minister of Education
Mr. Red Pederson, M.L.A.
Mr. Ludy Pudluk, M.L.A.
Mr. John T'seleie, M.L.A.
Mr. James Wah-Shee, M.L.A., Deputy Speaker

YUKON

Hon. Clark L. Ashley, M.L.A., Minister of Justice, Workers' Compensation Board, Yukon Housing Corporation and Yukon Liquor Corporation
Mrs. Pat Harvey, Acting Deputy Minister of Consumer and Corporate Affairs
Hon. Andrew Philipsen, M.L.A., Minister of Government Services and Minister of Health and Human Resources

WASHINGTON, D.C.

Mr. William H. Brown, Jr., Parliamentarian, House of Representatives
Mr. Robert B. Dove, Senate Parliamentarian
Mr. Patrick J. Giffin, Secretary for the Senate Minority
Mr. Michael Hatheway, Senate Energy Committee
Mr. William Hildenbrand, Secretary of the Senate

LEGISLATIVE ASSEMBLY
ALBERTA

SELECT SPECIAL LEGISLATIVE COMMITTEE
ON SENATE REFORM

7TH FLOOR
LEGISLATURE ANNEX
EDMONTON, ALBERTA
T5K 2B6
TELEPHONE 427-1844

October 23, 1984

We would like to thank you once again for your submission to the Select Special Committee on Senate Reform and ask if you might assist us in further evolving our recommendations to the Alberta Legislature.

Your proposal was one of 92 received from Alberta individuals and organizations, both during and since our public hearings held this summer. The results of those presentations are attached for your information.

The large majority of Albertans who responded would prefer an elected Senate with most believing in a Triple E (equal, effective and elected Senate). In order for the Committee to report in full to the Legislature on this proposal, we are looking for answers to a number of questions that the elected proposal raises. If you can assist with answers to any of these, we would be most appreciative.

.....2

1. Many believe that the primary role of a Senator is to represent regional or provincial interests. If he or she was supported by a national party, occasions could arise where the interests of a certain region and the national parties' interests were at odds. In such circumstances, regional or provincial representation could suffer. Some observers of the elected Australian Senate feel Senators in that country vote first for the interests of their national political parties (which are largely controlled by the most populous Australian states) and only second, according to the wishes of the people in the state they represent.

   If candidates to the Senate were not backed by political parties, we question how they would obtain funding and the campaign support required.

2. Another issue often discussed is based upon the assumption that an elected Senate would inevitably be more powerful than the Canadian Senate is today. If elected Senators became strong regional or provincial political figures, the resulting influence they would wield could detract from the power that presently resides with our other Parliament and Legislatures.

3. Some people hold the view that an elected Senate is incompatible with the Canadian parliamentary system. Our system presently limits the influence of the Senate since the Prime Minister and Cabinet are responsible to the House of Commons. If the Senate were to be popularly elected, it may be able to claim a political mandate equal to the House of Commons. If there is to be an elected Senate, how do we deal with this potential difficulty?

4. In meetings with representatives from other provinces and the federal Parliament, the Committee received vastly different views, level of interest and response to the complex questions involved in Senate Reform. In most cases, we did not receive a great deal of support for the elected Senate concept. Obtaining the solid support and agreement required by the constitutional amending formula from the federal and provincial Parliaments on the best characteristics of a reformed Senate may be very difficult. If we cannot in the immediate future proceed to an ideal agreement, should we negotiate a minimum first step to ensure change takes place? For example, it has been suggested that current Senators be phased-out over a period of years with a process put in place to select new Senators through a system that no one person can control. Similar gradual change could occur with the powers of the Senate. In terms of moving towards an equal Senate, we may be able to negotiate a higher minimum number of seats per province as an initial step.

5. Some believe that the First Ministers' Conference could play a strong role in upholding provincial rights if there was a constitutional requirement that it meet regularly. Possibly, such a conference could be given certain constitutional authority such as the review of federal emergency powers and powers over reservation and disallowance. It is often added that while Senate Reform may take years to accomplish, securing a constitutional role for First Ministers' Conferences may be accomplished relatively quickly.

Your comments on the preceding issues would be greatly appreciated.

6. Although the following issues were addressed in many of the briefs and presentations received by the Committee, your response to which of the following powers a reformed Senate should hold would be appreciated:

a) The Senate should have veto over appointments of Supreme Court justices.

Agree Disagree

b) The Senate should have veto over other appointments to federal boards and agencies.

Agree Disagree

c) The Senate should have a veto over appointments of Ambassadors.

Agree Disagree

d) The Senate should have a veto over the appointment of senior civil servants.

Agree Disagree

e) Senate ratification should be required for foreign treaties.

Agree Disagree

f) The Senate should have a full veto over House of Commons legislation, excluding money bills.

Agree Disagree

g) The Senate should have a full veto over House of Commons Legislation, including money bills.

Agree Disagree

h) The Senate's veto should be suspensive only.

Agree Disagree

i) Senators should not be appointed as Ministers of the Crown unless they first resign their seats in the Senate.

Agree Disagree

j) English and French language rights should be protected through a double majority veto for the Senate, that is a vote of the majority of total Senators plus the majority of French or English Senators be required on any move to change current language rights.

Agree Disagree

The Committee has reached no conclusions at this time. Your response to these questions will be of great assistance to the Committee. Please return this to us with any comments you may have before November 20th.

We appreciate your participation in developing the proposals which the Committee will make to the Alberta Legislature.

With sincere regards

Dennis Anderson, M.L.A.
Chairman
Select Special Committee on Senate Reform

Encl.

K. LIST OF RESPONDENTS TO THE LETTER

The following is a list of individuals and groups who responded to the Committee's October 23, 1984, letter inviting further comment:

Alberta Chamber of Commerce
Alberta Provincial Committee for an Elected Senate
Bailey, Mrs. Beryl
Beauchamp, Mr. Leonard
Calgary Buffalo Progressive Conservative Association
Canada West Foundation
Cockle, Mr. E.H.
Conrad, Mr. E. Keith
Cote, Mrs. Charlotte
Cote, Mr. Paul
Delwo, Mr. Ted
Dubuc, Mrs. Bernice
Filipowich, Mrs. Angie
Geuder, Mrs. Freda S.
Gregg, Mr. A.
Grieves, Mr. Tim
Hainsworth, Mrs. J.L.
Hasan, Mr. Syed
Hierath, Mr. Ken
Hirji, Mr. H.
Hurd, Mr. Larry D.
Jones, Mr. Roy M.P.
Kelly, Mr. & Mrs. William
Kott, Mr. R.E.
Mabbott, Mr. Randy
MacKinnon, Frank
Mason, Mrs. Minnie
McBride, Mr. Roy F.
McCormick. Dr. Peter
McNeil, Mrs. Evelyn
Meyer, Mr. Jack L.
Newbery, Mr. J.F.
Nightingale, Mr. Fred
Parsons, Mr. Robert V.
Paul, Mr. J.E.B.D.
Pocock, Mr. Norman A.

Ronaghan, Mr. Allen
Rose, Mr. Alex K.H.
Ross, Mr. Philip A.
Smith, Mr. Jerry
Taylor, Mrs. Kathleen
Todd, Mr. R. Campbell
Western Canada Concept
Wiley, Mrs. E.
Williams, Mr. Glen
Yurko, Mr. Bill

L. SELECTED SECTIONS OF THE CONSTITUTION ACTS, 1867 to 1982

CANADA

A Consolidation of

THE CONSTITUTION ACTS 1867 to 1982

DEPARTMENT OF JUSTICE
CANADA

Consolidated as of April 17, 1982

FOREWORD

This consolidation contains the text of the *British North America Act, 1867* (renamed the *Constitution Act, 1867* by the *Constitution Act, 1982*), together with amendments made to it since its enactment, and the text of the *Constitution Act, 1982*. The latter Act contains the *Canadian Charter of Rights and Freedoms* and other new provisions, including the procedure for amending the Constitution of Canada.

The *Constitution Act, 1982* also contains a Schedule of repeals of certain constitutional enactments and provides for the renaming of others. The *British North America Act, 1949*, for example, is renamed in the Schedule, the *Newfoundland Act*. The new names of these enactments are used in this consolidation, but their former names may be found in the Schedule.

The *Constitution Act, 1982*, was enacted as Schedule B to the *Canada Act 1982* (U.K.) 1982, c. 11. It is set out in this consolidation as a separate Act after the *Constitution Act, 1867*, and the *Canada Act 1982* is contained in the first footnote thereto.

The law embodied in the *Constitution Act, 1867* has been altered many times otherwise than by direct amendment, not only by the Parliament of the United Kingdom, but also by the Parliament of Canada and the legislatures of the provinces in those cases where provisions of that Act are expressed to be subject to alteration by Parliament or the legislatures. A consolidation of the Constitution Acts with only such subsequent enactments as directly alter the text of the Act would therefore not produce a true statement of the law. In preparing this consolidation an attempt has been made to reflect accurately the substance of the law contained in enactments modifying the provisions of the *Constitution Act, 1867*.

The various classes of enactments modifying the text of the *Constitution Act, 1867*, have been dealt with as follows:

I. Direct Amendments

1. *Repeals*

Repealed provisions (e.g. section 2) have been deleted from the text and quoted in a footnote.

2. *Amendments*

Amended provisions (e.g. section 4) are reproduced in the text in their amended form and the original provisions are quoted in a footnote.

3. *Additions*

Added provisions (e.g. section 51A) are included in the text.

4. *Substitutions*

Substituted provisions (e.g. section 18) are included in the text, and the former provision is quoted in a footnote.

II. Indirect Amendments

1. *Alterations by United Kingdom Parliament*

Provisions altered by the United Kingdom Parliament otherwise than by direct amendment (e.g. section 21) are included in the text in their altered form, and the original provision is quoted in a footnote.

2. *Additions by United Kingdom Parliament*

Constitutional provisions added otherwise than by the insertion of additional provisions in the *Constitution Act, 1867* (e.g. provisions of the *Constitution Act, 1871* authorizing Parliament to legislate for any territory not included in a province) are not incorporated in the text, but the additional provisions are quoted in an appropriate footnote.

3. *Alterations by Parliament of Canada*

Provisions subject to alteration by the Parliament of Canada (e.g. section 37) have been included in the text in their altered form, wherever possible, but where this was not feasible (e.g. section 40) the original section has been retained in the text and a footnote reference made to the Act of the Parliament of Canada effecting the alteration.

4. *Alterations by the Legislatures*

Provisions subject to alteration by legislatures of the provinces, either by virtue of specific authority (e.g. sections 83, 84) or by virtue of head 1 of section 92 (e.g. sections 70, 72), have been included in the text in their original form, but the footnotes refer to the provincial enactments effecting the alteration. Amendments to provincial enactments are not referred to; these may be readily found by consulting the indexes to

provincial statutes. The enactments of the original provinces only are referred to; there are corresponding enactments by the provinces created at a later date.

III. Spent Provisions

Footnote references are made to those sections that are spent or are probably spent. For example, section 119 became spent by lapse of time and the footnote reference so indicates; on the other hand, section 140 is probably spent, but short of examining all statutes passed before Confederation there would be no way of ascertaining definitely whether or not the section is spent; the footnote reference therefore indicates the section as being probably spent.

The enactments of the United Kingdom Parliament or the Parliament of Canada, and Orders in Council admitting territories, referred to in the footnotes, may be found in Appendix II to the Revised Statutes of Canada, 1970, and in the subsequent sessional volumes of the statutes of Canada.

The reader will notice inconsistencies in the capitalization of nouns. It was originally the practice to capitalize the first letter of all nouns in British statutes and the *Constitution Act, 1867*, was so written, but this practice was discontinued and was never followed in Canadian statutes. In the original provisions included in this consolidation nouns are written as they were enacted.

* * * * * * * * * * *

This consolidation contains material prepared by Dr. E. A. Driedger, Q.C., which was last published by the Department of Justice in 1976 under the title *The British North America Acts, 1867 to 1975*. The material has been updated where necessary but the Department gratefully acknowledges Dr. Driedger's earlier work.

THE CONSTITUTION ACT, 1867

30 & 31 Victoria, c. 3.

(Consolidated with amendments)

An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.

(29th March, 1867.)

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual Admission into the Union of other Parts of British North America: (1)

I. - PRELIMINARY.

Short title.

1. This Act may be cited as the *Constitution Act, 1867*.(2)

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(1) The enacting clause was repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., c 14 (U.K.). It read as follows:

> Be it therefore enacted and declared by the Queen's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:

(2) As enacted by the *Constitution Act, 1982*, which came into force on April 17, 1982. The section, as originally enacted, read as follows:

> 1. This Act may be cited as The British North America Act, 1867.

IV.—Legislative Power.

Constitution of Parliament of Canada.

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

Privileges, etc. of Houses.

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.(8)

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(8) Repealed and re-enacted by the *Parliament of Canada Act, 1875*, 38-39 Vict., c. 38 (U.K.). The original section read as follows:

> **18.** The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof.

The Senate.

Number of Senators.

21. The Senate shall, subject to the Provisions of this Act, consist of One Hundred and four Members, who shall be styled Senators.(11)

Representation of Provinces in Senate.

22. In relation to the Constitution of the Senate Canada shall be deemed to consist of Four Divisions:–

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick, and Prince Edward Island;
4. The Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta;

which Four Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by twenty-four senators; Quebec by twenty-four senators; the Maritime Provinces and Prince Edward Island by twenty-four senators, ten thereof representing Nova Scotia, ten

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(11) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.) and modified by the *Newfoundland Act*, 12-13 Geo. VI, c. 22 (U.K.), and the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53.

The original section read as follows:

> **21.** The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

The *Manitoba Act, 1870*, added two for Manitoba; the *British Columbia Terms of Union* added three; upon admission of Prince Edward Island four more were provided by section 147 of the *Constitution Act, 1867*; the *Alberta Act* and the *Saskatchewan Act* each added four. The Senate was reconstituted at 96 by the *Constitution Act, 1915*. Six more Senators were added upon union with Newfoundland, and one Senator each was added for the Yukon Territory and the Northwest Territories by the *Constitution Act (No. 2), 1975*.

thereof representing New Brunswick, and four thereof representing Prince Edward Island; the Western Provinces by twenty-four senators, six thereof representing Manitoba, six thereof representing British Columbia, six thereof representing Saskatchewan, and six thereof representing Alberta; Newfoundland shall be entitled to be represented in the Senate by six members; the Yukon Territory and the Northwest Territories shall be entitled to be represented in the Senate by one member each.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated statutes of Canada. (12)

Qualifications of Senator.

23. The Qualification of a Senator shall be as follows:

(1) He shall be of the full age of Thirty Years:

(2) He shall be either a natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada, after the Union:

(3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alleu or in Roture, within

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(12) As amended by the *Constitution Act, 1915*, the *Newfoundland Act*, 12-13 Geo. VI, c. 22 (U.K.), and the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53. The original section read as follows:

> **22.** In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions:
>
> 1. Ontario;
>
> 2. Quebec;
>
> 3. The Maritime Provinces, Nova Scotia and New Brunswick;
>
> which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: Ontario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.
>
> In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.

the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:

(4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:

(5) He shall be resident in the Province for which he is appointed:

(6) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division. (13)

Summons of Senator.

24. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

25. Repealed. (14)

Addition of Senators in certain cases.

26. If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Four or Eight Members be added to the Senate, the Governor General may by Summons to Four or Eight qualified Persons (as the Case may be), representing equally the Four Divisions of Canada, add to the Senate accordingly.(15)

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(13) Section 2 of the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53 provided that for the purposes of that Act (which added one Senator each for the Yukon Territory and the Northwest Territories) the term "Province" in section 23 of the *Constitution Act, 1867*, has the same meaning as is assigned to the term "province" by section 28 of the *Interpretation Act*, R.S.C. 1970, c. I-23, which provides that the term "province" means "a province of Canada, and includes the Yukon Territory and the Northwest Territories."

(14) Repealed by the *Statute Law Revision Act, 1893*, 56-57 Vict., 14 (U.K.). The section read as follows:

> **25.** Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

(15) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

> **26.** If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

Reduction of Senate to normal Number.

27. In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except upon a further like Direction by the Queen on the like Recommendation, to represent one of the Four Divisions until such Division is represented by Twenty-four Senators and no more.(16)

Maximum Number of Senators.

28. The Number of Senators shall not at any Time exceed One Hundred and twelve. (17)

Tenure of Place in Senate.

29. (1) Subject to subsection (2), a Senator shall, subject to the provisions of this Act, hold his place in the Senate for life.

Retirement upon attaining age of seventy-five years.

(2) A Senator who is summoned to the Senate after the coming into force of this subsection shall, subject to this Act, hold his place in the Senate until he attains the age of seventy-five years. (18)

Resignation of Place in Senate.

30. A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

Disqualification of Senators.

31. The Place of a Senator shall become vacant in any of the following Cases:

(1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:

(2) If he takes an Oath or makes a Declaration or Acknowledgement of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the

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(16) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.). The original section read as follows:

> **27.** In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more.

(17) As amended by the *Constitution Act, 1915*, 5-6 Geo. V, c. 45 (U.K.), and the *Constitution Act (No. 2), 1975*, S.C. 1974-75-76, c. 53. The original section read as follows:

> **28.** The Number of Senators shall not at any Time exceed Seventy-eight.

(18) As enacted by the *Constitution Act, 1965*, Statutes of Canada, 1965, c. 4 which came into force on the 1st of June 1965. The original section read as follows:

> **29.** A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

Rights or Privileges of a Subject or Citizen, of a Foreign Power.

(3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:

(4) If he is attainted of Treason or convicted of Felony or of any infamous Crime:

(5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

Summons on Vacancy in Senate.

32. When a Vacancy happens in the Senate by Resignation, Death or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

Questions as to Qualifications and Vacancies in Senate.

33. If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

Appointment of Speaker of Senate.

34. The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead. (19)

Quorum of Senate.

35. Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

Voting in Senate.

36. Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

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(19) Provision for exercising the functions of Speaker during his absence is made by the *Speaker of the Senate Act*, R.S.C. 1970, c. S-14. Doubts as to the power of Parliament to enact such an Act were removed by the *Canadian Speaker (Appointment of Deputy) Act, 1895*, 59 Vict., c. 3 (U.K.) which was repealed by the *Constitution Act, 1982*.

38. The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons. Summoning of House of Commons.

Money Votes; Royal Assent

53. Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons. Appropriation and Tax Bills.

VI.—Distribution of Legislative Powers.

Powers of the Parliament.

Legislative Authority of Parliament of Canada.

91. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. Repealed. (44)

1A. The Public Debt and Property. (45)

2. The Regulation of Trade and Commerce.

2A. Unemployment insurance. (46)

3. The raising of Money by any Mode or System of Taxation.

4. The borrowing of Money on the Public Credit.

5. Postal Service.

6. The Census and Statistics.

7. Militia, Military and Naval Service, and Defence.

8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.

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(44) Class 1 was added by the *British North America (No. 2) Act, 1949*, 13 Geo. VI, c. 8 (U.K.). That Act and class 1 were repealed by the *Constitution Act, 1982*. The matters referred to in class 1 are provided for in subsection 4(2) and Part V of the *Constitution Act, 1982*. As enacted, class 1 read as follows:

> 1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature or the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least once each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House: provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.

(45) Re-numbered by the *British North America (No. 2) Act, 1949*.

(46) Added by the *Constitution Act, 1940*, 3-4 Geo. VI, c. 36 (U.K.).

9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces. (47)

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(47) Legislative authority has been conferred on Parliament by other Acts as follows:

1. The *Constitution Act, 1871*, 34-35 Vict., c. 28 (U.K.).

IX. – Miscellaneous Provisions.

General.

Oath of Allegiance, etc.

128. Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

Treaty Obligations.

132. The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries, arising under Treaties between the Empire and such Foreign Countries.

133. Either the English or the French Language may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec. Use of English and French Languages.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages. (66)

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(66) A similar provision was enacted for Manitoba by Section 23 of the *Manitoba Act, 1870*, 33 Vict., c. 3 (Canada), (confirmed by the *Constitution Act, 1871*. Section 23 read as follows:

> **23.** Either the English or the French language may be used by any person in the debates of the Houses of the Legislature, and both those languages shall be used in the respective Records and Journals of those Houses; and either of those languages may be used by any person, or in any Pleading or Process, in or issuing from any Court of Canada established under the British North America Act, 1867, or in or from all or any of the Courts of the Province. The Acts of the Legislature shall be printed and published in both those languages.

Sections 17 to 19 of the *Constitution Act, 1982*, restate the language rights set out in section 133 in respect of Parliament and the courts established under the *Constitution Act, 1867*, and also guarantees those rights in respect of the legislature of New Brunswick and the courts of that province.

Section 16 and sections 20, 21 and 23 of the *Constitution Act, 1982*, recognize additional language rights in respect of the English and French languages. Section 22 preserves language rights and privileges of languages other than English and French.

As to Representation of Newfoundland and Prince Edward Island in Senate.

147. In case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation in the Senate of Canada of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the Third of Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen. (76)

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(76) Spent. See the notes to sections 21, 22, 26, 27 and 28, *supra*.

CONSTITUTION ACT, 1982 (79)

SCHEDULE B

CONSTITUTION ACT, 1982

PART V

PROCEDURE FOR AMENDING CONSTITUTION OF CANADA (93)

General procedure for amending Constitution of Canada

38. (1) An amendment to the Constitution of Canada may be made by proclamation issued by the Governor General under the Great Seal of Canada where so authorized by

(*a*) resolutions of the Senate and House of Commons; and

(*b*) resolutions of the legislative assemblies of at least two-thirds of the provinces that have, in the aggregate, according to the then latest general census, at least fifty per cent of the population of all the provinces.

Majority of members

(2) An amendment made under subsection (1) that derogates from the legislative powers, the proprietary rights or any other rights or privileges of the legislature or government of a province shall require a resolution supported by a majority of the members of each of the Senate, the House of Commons and the legislative assemblies required under subsection (1).

Expression of dissent

(3) An amendment referred to in subsection (2) shall not have effect in a province the legislative assembly of which has expressed its dissent thereto by resolution supported by a majority of its members prior to the issue of the proclamation to which the amendment relates unless that legislative assembly, subsequently, by resolution supported by a majority of its members, revokes its dissent and authorizes the amendment.

Revocation of dissent

(4) A resolution of dissent made for the purposes of subsection (3) may be revoked at any time before or after the issue of the proclamation to which it relates.

Restriction on proclamation

39. (1) A proclamation shall not be issued under subsection 38(1) before the expiration of one year from the adoption

---

(93) Prior to the enactment of Part V certain provisions of the Constitution of Canada and the provincial constitutions could be amended pursuant to the *Constitution Act, 1867*. See the footnotes to section 91, Class 1 and section 92, Class 1 thereof, *supra*. Other amendments to the Constitution could only be made by enactment of the Parliament of the United Kingdom.

of the resolution initiating the amendment procedure thereunder, unless the legislative assembly of each province has previously adopted a resolution of assent or dissent.

Idem

(2) A proclamation shall not be issued under subsection 38(1) after the expiration of three years from the adoption of the resolution initiating the amendment procedure thereunder.

Compensation

40. Where an amendment is made under subsection 38(1) that transfers provincial legislative powers relating to education or other cultural matters from provincial legislatures to Parliament, Canada shall provide reasonable compensation to any province to which the amendment does not apply.

Amendment by unanimous consent

41. An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by the Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province:

(*a*) the office of the Queen, the Governor General and the Lieutenant Governor of a province;

(*b*) the right of a province to a number of members in the House of Commons not less than the number of Senators by which the province is entitled to be represented at the time this Part comes into force;

(*c*) subject to section 43, the use of the English or the French language;

(*d*) the composition of the Supreme Court of Canada; and

(*e*) an amendment to this Part.

Amendment by general procedure

42. (1) An amendment to the Constitution of Canada in relation to the following matters may be made only in accordance with subsection 38(1):

(*a*) the principle of proportionate representation of the provinces in the House of Commons prescribed by the Constitution of Canada;

(*b*) the powers of the Senate and the method of selecting Senators;

(*c*) the number of members by which a province is entitled to be represented in the Senate and the residence qualifications of Senators;

(*d*) subject to paragraph 41(*d*), the Supreme Court of Canada;

(*e*) the extension of existing provinces into the territories; and

(*f*) notwithstanding any other law or practice, the establishment of new provinces.

Exception

(2) Subsections 38(2) to (4) do not apply in respect of amendments in relation to matters referred to in subsection (1).

Amendment of provisions relating to some but not all provinces

43. An amendment to the Constitution of Canada in relation to any provision that applies to one or more, but not all, provinces, including

(*a*) any alteration to boundaries between provinces, and

(*b*) any amendment to any provision that relates to the use of the English or the French language within a province,

may be made by proclamation issued by the Governor General under the Great Seal of Canada only where so authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province to which the amendment applies.

Amendments by Parliament

44. Subject to sections 41 and 42, Parliament may exclusively make laws amending the Constitution of Canada in relation to the executive government of Canada or the Senate and House of Commons.

Amendments by provincial legislatures

45. Subject to section 41, the legislature of each province may exclusively make laws amending the constitution of the province.

Initiation of amendment procedures

46. (1) The procedures for amendment under sections 38, 41, 42 and 43 may be initiated either by the Senate or the House of Commons or by the legislative assembly of a province.

Revocation of authorization

(2) A resolution of assent made for the purposes of this Part may be revoked at any time before the issue of a proclamation authorized by it.

Amendments without Senate resolution

47. (1) An amendment to the Constitution of Canada made by proclamation under section 38, 41, 42 or 43 may be made without a resolution of the Senate authorizing the issue of the proclamation if, within one hundred and eighty days after the adoption by the House of Commons of a resolution authorizing its issue, the Senate has not adopted such a resolution and if, at any time after the expiration of that period, the House of Commons again adopts the resolution.

Computation of period

(2) Any period when Parliament is prorogued or dissolved shall not be counted in computing the one hundred and eighty day period referred to in subsection (1).

Advice to issue proclamation

48. The Queen's Privy Council for Canada shall advise the Governor General to issue a proclamation under this Part forthwith on the adoption of the resolutions required for an amendment made by proclamation under this Part.

Constitutional conference

49. A constitutional conference composed of the Prime Minister of Canada and the first ministers of the provinces shall be convened by the Prime Minister of Canada within fifteen years after this Part comes into force to review the provisions of this Part.

PART VII

GENERAL

Primacy of Constitution of Canada

52. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

(*a*) the *Canada Act 1982*, including this Act;

(*b*) the Acts and orders referred to in the schedule; and

(*c*) any amendment to any Act or order referred to in paragraph (*a*) or (*b*).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.